



Traffic Benchbook

THIRD EDITION

Volume One:

Civil Infractions

Misdemeanor Traffic Offenses

Traffic Benchbook—Third Edition

Volume 1



Michigan Judicial Institute

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and the U.S. Department of Transportation

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The research contained in this benchbook is current through May 1, 2005. This benchbook is not intended to be an authoritative statement by the Justices of the Michigan Supreme Court regarding any of the substantive issues discussed. However, it does represent the consensus of the author and the Editorial Advisory Committee members regarding these issues.

Foreword and Acknowledgments

The *Traffic Benchbook—Third Edition* is a revised and updated edition of MJJ's *Traffic Benchbook*, which was first published in 1993. The *Traffic Benchbook—Revised Edition* (1999) was developed through a project funded by the Michigan Office of Highway Safety Planning and the U.S. Department of Transportation. The Michigan Judicial Institute thanks these agencies for their generous support.

The *Traffic Benchbook—Third Edition* consists of three volumes.

Volume 1 addresses the following topics:

- Civil infractions and civil infraction procedures (Chapters 1 and 2).
- Traffic misdemeanors in the Motor Vehicle Code (Chapter 3).

Volume 2 addresses the following topics:

- Violations involving off-road vehicles, snowmobiles, and marine vessels and personal watercraft (Chapters 4–6).

Volume 3 addresses the following topics:

- Drunk driving and suspended/revoked license violations under Vehicle Code §625 and §904 (Chapters 1–5).
- Traffic felonies (Chapters 6–9).

The *Juvenile Traffic Benchbook—Revised Edition* addresses procedures in cases involving traffic offenses committed by persons under 17 years of age. It is intended to be a companion volume to volumes 1 and 2.

Work on the first edition of the *Traffic Benchbook* was overseen by an Advisory Committee comprised of judges, court personnel, prosecutors, private attorneys, law enforcement officers, legislators, and social service providers. Work on the *Traffic Benchbook—Revised Edition* was similarly overseen by an Advisory Committee comprised of magistrates and other persons with expertise in the area of Michigan traffic law. For both editions, Advisory Committee members reviewed those portions of the text that addressed their areas of expertise and provided content suggestions.

The Advisory Committee members for the first edition of the *Traffic Benchbook* were as follows:

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Civil Infractions

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Part A—Introduction

1.1 Civil Infractions

*See MCL 600.8701 et seq. (municipal civil infractions) and MCL 600.8801 et seq. (state civil infractions).

As of 1994, Michigan has grouped civil infractions into three major categories: those infractions found in the Motor Vehicle Code, MCL 257.1 et seq., state civil infractions, and municipal civil infractions. See MCL 600.113. Motor vehicle violations can be found in each of the three categories.*

A. Motor Vehicle Code Civil Infractions

Michigan law recognizes several types of traffic offenses. Years ago, all traffic offenses were classified as crimes. The offenders were tried in criminal courts and, if found guilty, were punished by fines and imprisonment. As the number of drivers and vehicles increased, the burden on the criminal courts became unmanageable. In 1979, the Michigan Legislature amended many sections of the Motor Vehicle Code (MVC), changing the status of many traffic misdemeanors to civil infractions. Many minor traffic offenses were thereby decriminalized and have thereafter been adjudicated in hearings (formal and informal) rather than trials. See 1978 PA 510 (“Civil Infraction Act”), and *People v Schomaker*, 116 Mich App 507, 515 (1982) (under the amended statute, denial of jury trial to persons charged with civil infractions did not render amendment unconstitutional).

The MVC clearly distinguishes the civil infraction from the misdemeanor and felony traffic offense. “It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of this state declared to be a felony or a civil infraction.” MCL 257.901(1). In other words, all civil infractions are declared by statute to be so.

Civil infraction actions are civil proceedings. MCL 257.741(1). Adjudication of a civil infraction violation follows the rules of civil procedure as provided in a separate court rule. See, generally, MCL 257.741–257.750 and MCR 4.101. The court must decide either in favor of the plaintiff or in favor of the defendant by a preponderance of the evidence. Because the defendant no longer faces the possibility of going to jail, the procedural safeguards necessary in a criminal case (e.g., the right to a jury trial, the right to appointed counsel for indigents, proof beyond a reasonable doubt, and strict adherence to the rules of evidence) are not observed.

A driver who is cited for a civil infraction does not plead “guilty,” “not guilty,” or “nolo contendere”; he or she must either admit responsibility, admit responsibility with explanation, or deny responsibility for the civil infraction violation. MCL 257.745. Defendant drivers are not convicted but instead are found responsible. Because a civil infraction is not a crime, findings of responsibility are not reported on the defendant’s criminal record;

however, they are reported to the Secretary of State and appear on the defendant's "Master Driver Record" maintained by the Secretary of State.

Most traffic offenses are no longer criminal offenses but are now civil infractions. Civil infractions are not crimes and are not punishable by imprisonment or by penal fines.

B. Time Guidelines for Processing Civil Infraction Cases

"The time specified in a citation for appearance shall be within a reasonable time after the citation is issued" MCL 257.741(3). Administrative Order 2003-7, 469 Mich lxv (2003), established time guidelines for case processing.* The guidelines for civil infraction proceedings are as follows:

"90% of all civil infraction cases, including traffic, nontraffic, and parking cases, should be adjudicated within 35 days from the date of filing; 98% within 56 days and 100% within 84 days." 469 Mich at lxviii.

*The guidelines do not supersede procedural requirements in court rules or statutes. 469 Mich at lxvi.

1.2 Distinguishing Civil Infractions From Criminal Traffic Offenses

A civil infraction is "an act or omission prohibited by law which is not a crime . . . and for which civil sanctions may be ordered." MCL 257.6a. Crime means "an act or omission forbidden by law which is not designated as a civil infraction, and which is punishable upon conviction by any 1 or more of the following:

"(a) Imprisonment.

"(b) Fine not designated a civil fine.

"(c) Removal from office.

"(d) Disqualification to hold an office of trust, honor, or profit under the state.

"(e) Other penal discipline." MCL 750.5.

A civil infraction is not a crime and therefore not a lesser-included offense of a criminal offense. MCL 257.907(1).

"A warrant may not be issued for a civil infraction unless permitted by statute." MCR 4.101(A)(4). The court cannot issue a warrant if the violation is not a crime. However, the civil infraction could create the impetus for issuing a warrant. For example, if the defendant fails to appear or otherwise respond to any matter pending relative to a civil infraction action (failure to do so is a misdemeanor), the court shall notify the Secretary of State and the

Secretary of State shall suspend the defendant's license. If the defendant is later stopped while driving on a suspended license (also a misdemeanor), the court may issue a warrant. See MCL 257.321a(1) and (2).

1.3 Jurisdiction and Venue for Traffic Civil Infractions

A. Jurisdiction

*This statute also gives the Recorder's Court jurisdiction of traffic civil infraction actions. However, Recorder's Court was abolished in 1997. See MCL 600.9931.

*See *Juvenile Traffic Benchbook—Revised Edition* (MJI, 2005), Section 1.2, for detailed discussion of jurisdiction of civil infractions committed by minors.

MCL 257.741(2) provides that the district court and any municipal court have jurisdiction of traffic civil infraction actions.*

Note: The district court may establish within the court a traffic bureau to accept and collect civil fines and costs as prescribed by the judges of the district. MCL 600.8391.

MCL 257.741(5) states:

“If the person cited [for a civil infraction] is a minor, that individual shall be permitted to appear in court without the necessity of appointment of a guardian or next friend. The courts listed in subsection (2) shall have jurisdiction over the minor and may proceed in the same manner and in all respects as if that individual were an adult.”*

B. Venue

“Venue in the district court shall be governed by [MCL 600.8312].” MCL 257.741(4).

MCL 600.8312(6) states:

“(6) Venue in civil infraction actions shall be determined as follows:

“(a) In a district of the first class, venue shall be in the county where the civil infraction occurred.

“(b) In a district of the second class, venue shall be in the district where the civil infraction occurred.

“(c) In a district of the third class, venue shall be in the political subdivision where the civil infraction occurred, except that when the violation is alleged to have taken place within a political subdivision where the court is not

required to sit, the action may be heard or an admission entered in any political subdivision within the district where the court is required to sit.”

1.4 Hearings a District Court Judge or Magistrate May Conduct

A district court judge may hear and decide all civil infraction cases. MCL 600.8301(2). A district court judge must conduct all formal hearings in civil infraction actions. MCL 257.747(1). A district court judge must also conduct a hearing on an appeal from an informal hearing conducted by a district court magistrate. MCL 257.746(5)(b). A chief district court judge, presiding district court judge, or the only judge of a district court may confer authority on a district court magistrate to preside over civil infraction actions as authorized by MCL 600.8512. MCL 600.8512(3). MCL 600.8512 provides that a district court magistrate may exercise the following authority:

“(1) A district court magistrate may hear and preside over civil infraction admissions and admissions with explanation and conduct informal hearings in civil infraction actions In exercising the authority conferred by this subsection, the magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law. If the defendant is determined to be responsible for a civil infraction, the magistrate may impose the civil sanctions”

“(2) A district court magistrate shall not conduct an informal hearing in a civil infraction action involving a traffic or parking violations governed by . . . 257.1 to 257.923 of the Michigan Compiled Laws, until he or she has successfully completed a special training course in traffic law adjudication and sanctions. The course shall be given periodically by the state court administrator.

“(3) A district court magistrate may exercise the authority conferred by this section only to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district.”

MCL 600.8512a also restricts a district court magistrate’s authority to the extent that is authorized by the district court. MCL 600.8512a states in part:

“Only to the extent expressly authorized by the chief judge, presiding judge, or only judge of the district court district, a district court magistrate may do 1 or more of the following:

“(a) Accept an admission of responsibility and order civil sanctions for a civil infraction and order an appropriate

civil sanction permitted by the statute or ordinance defining the act or omission.”

See also MCR 4.401(B), which states that “[n]otwithstanding statutory provisions to the contrary, [district court] magistrates exercise only those duties expressly authorized by the chief judge of the district or division.”

District court judges have superintending control over district court magistrates. MCL 600.8541 states:

“(1) The judges of the district court shall exercise superintending control over all magistrates within their districts. A district judge may not extend the jurisdiction of a district court magistrate beyond the jurisdiction expressly provided by law.

“(2) A district court judge may perform in chambers all functions and duties which a district court magistrate is authorized to perform under [MCL 600.8511 or 600.8512a.]”

A district court judge’s control of a district court magistrate’s actions is also recognized in MCR 4.401(C), which states that “[a]n action taken by a [district court] magistrate may be superseded, without formal appeal,* by order of a district judge in the district in which the magistrate serves.”

*See Section 1.15, below, for discussion of appeals from informal hearings.

Part B— The Citation

1.5 Traffic Citations

A civil infraction action begins with the issuance, service, and filing of a citation. MCL 257.741(1) and MCR 4.101(A)(1). The plaintiff in a civil infraction action is either the state if the alleged civil infraction is a violation of the Motor Vehicle Code, or a political subdivision if the alleged civil infraction is a violation of a local ordinance that substantially corresponds to a provision of the Motor Vehicle Code. *Id.*

Citation means “a complaint or notice upon which a police officer shall record an occurrence involving 1 or more vehicle law violations by the person cited.” MCL 257.727c(1). The citation must be in a form as determined by the Secretary of State, the Attorney General, the State Court Administrator, and the Director of the Department of State Police. *Id.* MCL 257.727c(1)(a)-(d) require a citation to consist of the following:

“(a) The original which shall be a complaint or notice to appear by the officer and shall be filed* with the court in which the appearance is to be made.

*See Section 1.6(B), below, for information on filing a citation.

“(b) The first copy which shall be retained by the local traffic enforcement agency.

“(c) The second copy which shall be delivered to the alleged violator if the violation is a misdemeanor.

“(d) The third copy which shall be delivered to the alleged violator if the violation is a civil infraction.”

“A single citation may not allege both a misdemeanor and a civil infraction.”
MCR 4.101(A)(3).

The citation serves as a summons to command both the defendant’s initial appearance and a response from the defendant as to his or her responsibility for the alleged violation. MCR 4.101(A)(2)(a)-(b).

A. Information Required on the Citation

Citations are required to contain specific information. Electronic citations must also meet these requirements. MCR 8.125(B). The following information shall be included on a citation:

- the name of the state or political subdivision acting as the plaintiff;
- the name and address of the person to whom the citation is issued;
- the civil infraction alleged;
- the place where the person shall appear in court;
- the telephone number of the court; and
- the time at or by which the appearance shall be made. MCL 257.743(1).

Additionally, a citation must inform the defendant that he or she may do one of the following by the appearance date specified on the citation:

- “Admit responsibility” in person, by representation, or by mail; MCL 257.743(2)(a).
- “Admit responsibility with explanation” in person, by representation, or by mail; MCL 257.743(2)(b).
- “Deny responsibility” by appearing before the district court either for an informal hearing before a district court magistrate or judge, without the opportunity of being represented by an attorney; or for a formal hearing before a district court judge, with the opportunity to be represented by an attorney. MCL 257.743(2)(c)(i)-(ii).

MCL 257.743(3)-(4) contains the following additional requirements:

*See Section 1.18, below, for information on default judgments.

“(3) The citation shall inform the defendant that if the person desires to admit responsibility ‘with explanation’ other than by mail or to have an informal hearing or a formal hearing, the person must apply to the court in person, by mail, or by telephone, within the time specified for appearance and obtain a scheduled date and time to appear for a hearing. A hearing date may be specified on the citation.

“(4) The citation shall contain a notice in boldface type that the failure of a person to appear within the time specified in the citation or at the time scheduled for a hearing or appearance will result in entry of a default judgment* against the person and in the immediate suspension of the person’s operator’s or chauffeur’s license. Timely application to the court for a hearing or return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs constitute a timely appearance.”

If a citation is issued to a person who is operating a commercial vehicle, the citation shall contain a vehicle group designation number and indorsement description of the vehicle. MCL 257.743(5).

Parking Violation Notices. A police officer, limited duty police officer, or other authorized person may issue a parking violation notice. A parking violation notice must be filed with the court in the same manner as a citation but need not contain the same information as a citation. MCL 257.742(7). A parking violation notice need only contain a sworn complaint alleging a parking violation and information on how a defendant must respond. *Id.*

B. Signed Under Oath

When an offense is committed in an officer’s presence, a citation must be prepared and subscribed (signed by the citing officer) as soon as possible and as completely as possible. MCL 257.742(1). If the citation is filed electronically and the full name of the issuing officer appears on the citation, it will be “deemed to have been signed.” MCR 8.125(B)(3).

A citation signed by a police officer shall be treated as made under oath if all of the following requirements are met:

- the alleged violation is a civil infraction or a misdemeanor or ordinance violation punishable by not more than 93 days or fine, or both;
- the violation occurred or was committed in the signing officer’s presence, or under circumstances permitting the officer’s issuance of a citation under MCL 257.625a (governing warrantless arrests

for alcohol-related driving offenses) or MCL 257.728(8) (governing citations issued after investigation of a traffic accident); and

- the citation contains the following statement immediately above the date and signature of the officer:

“I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.”

MCL 257.727c(3).

If the defendant admits responsibility or admits responsibility with an explanation,* the court may proceed without a sworn complaint. MCL 257.744.

*See Section 1.9, below, regarding admissions.

If a citation results in a contested hearing, formal or informal, the court may not proceed until the citation is filed with the court. If the citation was filed electronically pursuant to MCR 4.101(A)(1), the court may decline to hear the case until the citation is signed by the officer and is filed on a paper. MCR 8.125(C). If the citation is not signed and filed on paper when required by the court, the citation should be dismissed with prejudice. MCR 4.101(E)(1). Pursuant to MCL 257.744, if the defendant denies responsibility for the civil infraction, further proceedings shall not be had until a sworn complaint is filed with the court.*

*See Section 1.6(B), below, for more information on filing a citation.

In *People v Ferency*, 133 Mich App 526, 531-532 (1984), the Court of Appeals held that a signed citation constitutes a sworn complaint for the purposes of MCL 257.744. Therefore, if the officer has filed a signed citation in compliance with MCL 257.727c, the requirement of a sworn complaint has been fulfilled. MCR 4.101(A)(1) also provides that the original copy of the citation that is filed with the district court serves as the complaint.

1.6 Issuing and Filing the Citation

A. Issuing a Citation

A civil infraction proceeding begins when a law enforcement officer issues a citation to a driver. MCL 257.741(1) and MCR 4.101(A)(1). The cited driver is the defendant.

For a parking violation, a civil infraction proceeding begins when an authorized person securely places a citation or parking violation notice on the vehicle, or mails a citation to the registered owner of the vehicle, and files a copy with the district court. MCR 4.101(A)(1)(a).

A citation may be issued in the following circumstances:

- When an officer witnesses a civil infraction violation, the officer may stop and detain a person temporarily for purposes of making a record of vehicle check and issuing a citation for a civil infraction. MCL 257.742(1).
- “A police officer may stop and detain a driver involved in a motor vehicle accident for the purpose of issuing a citation for a civil infraction when (1) the officer witnesses the civil infraction violation, or (2) based upon the officer’s personal investigation, the officer has reasonable cause to believe that the driver is responsible for a civil infraction [in connection with the accident]. MCL 257.742(1), (3).” *People v Estabrooks*, 175 Mich App 532, 537 (1989).
- After a personal investigation of a citizen’s complaint, if there is reasonable cause to believe the driver committed a civil infraction and the prosecuting attorney approves in writing the issuance of the citation, an officer may issue a citation to the driver. MCL 257.742(3). “A police officer may not stop a driver for a civil infraction solely on the basis of a witness’ complaint.” *Estabrooks*, *supra* at 538.

*MCL 257.749 governs civil infraction actions involving nonresidents of Michigan. See Section 1.7, below.

The officer may also issue a citation outside of his or her area of jurisdiction. If the officer witnessed a civil infraction within his or her area of jurisdiction, the “officer may pursue, stop, and detain the person outside the village, city, township, or county where the violation occurred for the purpose of exercising the authority and performing the duties prescribed in this section and [MCL 257.749*], as applicable.” MCL 257.742(1). MCL 257.726a also provides that a peace officer may exercise his or her authority outside of his or her own jurisdiction when he or she is enforcing the MVC on the boundary of his or her county, city, village, or township.

B. Serving and Filing the Citation

MCR 4.101(A)(1)(a) and (b) state:

“(1) Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator, and filing the citation in the district court.

“(a) If the infraction is a parking violation, the action may be initiated by an authorized person placing a citation securely on the vehicle or mailing a citation to the registered owner of the vehicle. In either event, the citation must be filed in the district court.

“(b) If the infraction is a municipal civil infraction, the action may be initiated by an authorized local official serving a written citation on the alleged violator. . . .”

The original copy of the citation is filed with the district court and serves as the complaint. MCR 4.101(A)(1). The citation may be filed either on paper or electronically. *Id.** The original must be filed with the court having jurisdiction over the offense not later than three days after the date of the citation. See MCL 257.728a(1)–(2).

The Motor Vehicle Code requires that the officer inform the defendant of the “alleged civil infraction or infractions and . . . deliver the third copy of the citation to the offender.” MCL 257.742(5).

“In a civil infraction involving the parking or standing of a motor vehicle, a copy of the citation need not be served personally upon the defendant but may be served upon the registered owner by attaching the copy to the vehicle. . . .” MCL 257.742(6).

The failure to respond to a parking violation notice other than a citation may result in the issuance of a citation. A copy of such a citation may be served by first-class mail upon the registered owner of the vehicle at the owner’s last-known address. Citations alleging parking or standing violations are processed in the same manner as other citations alleging civil infractions. See MCL 257.742(7)–(8). However, the citation does not need to comply with MCL 257.727c and MCL 257.743. The citation must be a sworn complaint containing the allegations stated in the parking violation notice and must inform the defendant of how to respond to the citation. MCL 257.742(7).

*The court may require an officer to go to the court to sign the electronic copy. See Section 1.5(B), above, for more information.

1.7 Special Requirements for Nonresidents

If the defendant is a nonresident of Michigan, several special provisions apply. First, the citing officer is required by law to take the nonresident defendant’s license as security for the defendant’s appearance in court unless the nonresident leaves either a so-called guaranteed appearance certificate or a sum of money not to exceed \$100.00. Second, the nonresident has the option under Michigan law to demand to be taken to the nearest magistrate, if one is available, to answer the civil infraction charged. The nonresident defendant’s license shall be returned if:

- judgment is entered for the defendant;
- an adverse judgment against the defendant is satisfied; or
- defendant leaves either a so-called guaranteed appearance certificate or a sum of money not to exceed \$100.00.

MCL 257.749(1)–(3).

*See Section 1.16, below, for information on scheduling formal hearings.

If the nonresident defendant requests a formal hearing, the hearing must be scheduled in the same manner as any formal hearing.* However, the court must retain the defendant's license until final resolution of the civil infraction unless the defendant leaves with the court a "guaranteed appearance certificate" or a sum of money not to exceed \$100.00 as security for appearance at the formal hearing. MCL 257.749(3).

A "guaranteed appearance certificate" means "a card or certificate containing a printed statement that a surety company authorized to do business in this state guarantees the appearance of the person whose signature appears on the card or certificate, and that the company, if the person fails to appear in court at the time of a scheduled informal or formal hearing or to pay any fine or costs imposed pursuant to section 907, will pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed \$200.00." MCL 257.749(7).

Part C—Admissions of Responsibility and Taking Matters Under Advisement

1.8 Defendant's Options When a Citation Is Issued

The rules of procedure for adjudication of civil infractions are found in MCL 257.741–257.750 and MCR 4.101.

All defendants who receive a citation for a civil infraction shall appear and may respond to the allegations in the citation. MCL 257.745. A defendant has these options:

- Admit responsibility for the civil infraction by making an appearance in person, by representation, or by mail. MCL 257.745(2). An admission of responsibility may be offered to and accepted by a district court judge, a district court magistrate,* or other district court personnel so authorized by a judge of the district. MCR 4.101(D)(1).
- Admit responsibility "with explanation" for the civil infraction by making an appearance by mail or by contacting the court to obtain a scheduled date and time to appear in person or by representation. MCL 257.745(3). An admission of responsibility "with explanation" "may be written or offered orally to a judge or district court magistrate, as authorized by the district judge." MCR 4.101(D)(2).
- Deny responsibility for the civil infraction by making an appearance at an informal or formal hearing. MCL 257.745(5). "[A] denial of responsibility must be made by the defendant

*As authorized by the chief judge, presiding judge, or sole judge of the district. See Section 1.4, above.

appearing at a time set either by the citation or as a result of a communication with the court.” MCR 4.101(D)(3).

If a defendant has been cited for a railway municipal civil infraction resulting in property damage or vehicle impoundment, the defendant must respond at a formal hearing. MCR 4.101(D)(4).*

*See Section 1.16, below, for information on formal hearings.

1.9 Defendant Admits Responsibility or Admits Responsibility “With Explanation”

Quite often, a defendant chooses to dispose of the matter quickly by admitting responsibility. A defendant may admit responsibility or admit responsibility with explanation by mail or by personally delivering the citation to the court, or by representation. MCL 257.745(2)-(3). A defendant who admits committing the civil infraction but contends that sanctions should be mitigated because of extenuating circumstances may admit responsibility “with explanation.” “[A]n admission with explanation may be written or offered orally” MCR 4.101(D)(2).

A. Accepting an Admission of Responsibility by Mail

If a defendant admits responsibility with or without explanation for the civil infraction, he or she may do so by mail. MCL 257.745(2)-(3).

Typically, a defendant is instructed in the citation to contact the court to get the amount of the civil fine and costs. The defendant is further instructed to mail his or her copy of the citation, signed, with a certified check or money order to the court clerk, on or before the appearance date on the citation. “The time specified in a citation for appearance shall be within a reasonable time after the citation is issued. . . .” MCL 257.741(3).

When a defendant admits responsibility by mail, “the court may accept the admission with the same effect as though the person personally appeared in court.” MCL 257.745(2). When a defendant admits responsibility with an explanation by mail, “the court may accept the admission with the same effect as though the person personally appeared in court, but the court may require the person to provide a further explanation or to appear in court.” MCL 257.745(4).

B. Accepting an Admission of Responsibility in Person or by Representation

Appearance in Person. If a defendant admits responsibility for the civil infraction, he or she may appear in person. MCL 257.745(2)-(3).

*See Section 1.3(A), above, regarding jurisdiction.

A citation must include the place where the defendant must appear in court. MCL 257.743(1). The place specified in the citation must be the court that has jurisdiction* of the place where the civil infraction occurred. MCL 257.741(4). “The time specified in a citation for appearance shall be within a reasonable time after the citation is issued” MCL 257.741(3).

If a defendant is unable to appear in person at the time indicated on the citation, he or she must contact the court for a date and time to appear. “A defendant may not appear by making a telephone call to the court, but a defendant may telephone the court to obtain a date to appear.” MCR 4.101(B)(2). Scheduling the appearance date varies from court to court. Some district courts schedule a specific date for the defendant to appear. Other courts schedule the defendant to appear on a “drop-in” basis within a specific period of time. If the defendant is rescheduled from the original time indicated on the citation, the time specified should still be within a reasonable time after the citation is issued.

If the appearance date is scheduled by telephone, the court may wish to mail to the defendant a notice confirming the appearance date.

*It may be a good idea to identify the person appearing by representation for the defendant.

Appearance by Representation. Appearance by representation means the defendant chooses another person to represent the interests of or to stand in the place of the defendant. The representative is empowered to act for the defendant. When the defendant admits responsibility by representation, “the court may accept the admission with the same effect as though the person personally appeared in court.” MCL 257.745(2). When the defendant admits responsibility “with explanation” by representation, “the court may accept the admission with the same effect as though the person personally appeared in court, but the court may require the person to provide a further explanation or to appear in court.” MCL 257.745(4).*

C. Admissions With Explanation

“[T]he court shall accept the admission as though the person has admitted responsibility . . . and may consider the person’s explanation by way of mitigating any sanction which the court may order” MCL 257.745(4). The statute says “may consider”; it does not provide specific guidelines regarding when and to what extent the court should mitigate sanctions. That decision is left to the discretion of the court. The court’s experience and sense of justice should determine how defendant’s explanation is to be evaluated.

Certain factors may not only mitigate the possible sanctions but may excuse the defendant entirely. The court may wish to remind the defendant of his or her right to deny responsibility and to request a hearing. These factors include:

- inoperative or improperly working automatic traffic signals;
- signs removed by thieves or obscured because of vegetation, rust, or vandalism; and

- sudden and unforeseeable emergencies, such as brake failure not resulting from lack of proper maintenance.

1.10 Request to Withdraw Admission

MCR 4.101(G)(3) states:

“There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond [equal to the fines and costs imposed]. If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs.”

1.11 Taking Matters Under Advisement

The State Court Administrative Office stated the following in the October 1998 issue of the *Michigan Supreme Court Report*:

“The SCAO has been encouraged to work with the courts to discontinue the practice of not reporting traffic violation convictions to the Department of State, and to determine the appropriate disposition of fines, fees, and costs when traffic violation convictions are later dismissed.

“The recommendations were published in a recent audit by the Office of the Auditor General, which reviewed the reporting of driver license points and the collection and disposition of fines and fees. In part, the audit addressed the practice of taking traffic cases ‘under advisement.’

“The SCAO recommends that courts discontinue the practice of taking matters under advisement. All convictions must be reported to the Department of State pursuant to MCL 257.732. Without specific statutory authority, programs that provide for payment of fines, fees, or costs without entry of a conviction or report of the conviction to the Department of State must be amended to eliminate payments.

“Locally, the practice of taking matters under advisement may also be known by such terms as: delayed sentencing; deferred sentencing; diversion; auditing; dismissal with costs; or administrative review. Use of these programs is not uniform, resulting in a perception of inconsistent application of justice. Failure to submit conviction abstracts compromises the accuracy

and integrity of Michigan driving records and is a public safety issue.

“Chief judges are urged to review the following statutory provisions, ethics opinion and attorney general’s opinion regarding this matter:

- “Judicial Ethics Opinion JI-117, January 9, 1998;
- “Attorney General Opinion 6995, September 16, 1998;
- “MCL 257.6b; Definition of a civil infraction determination;
- “MCL 257.8a; Definition of a conviction;
- “MCL 257.732; Requirement to abstract convictions, bond forfeitures, civil infraction determinations, and civil infraction default judgments;
- “MCL 257.745; Procedure for admitting or denying responsibility for a civil infraction;
- “MCL 257.746; Procedure for entering a judgment of responsibility after informal hearing;
- “MCL 257.747; Procedure for entering a judgment of responsibility after formal hearing; and
- “MCL 257.907; Procedure for assessment of fines, costs and fees only after a person is determined responsible or responsible with explanation after hearing or after default.”

See also the September 1990 issue of *Michellaneous*, which contains the following statement regarding taking pleas under advisement in civil infraction actions:

“Some courts have a practice of taking civil infraction cases ‘under advisement’ when an offender admits responsibility. While there appears to be no statutory authority to provide for this practice, it is very common in some courts while not allowed in others. This situation results in confusion for litigants and can lead to a perception that all citizens do not have access to equal justice.

“Some courts limit taking civil infractions under advisement to special cases. Other courts have allowed the process to become so common that the officer (when issuing the citation) or the court clerk (when the offender contacts the court) advises the offender that s/he may request an admission be taken under advisement.

“This practice, regardless of the intentions, negatively impacts the accuracy and integrity of Michigan driving records. Under this procedure, no conviction abstract is submitted to the Department

of State. If the offender is not convicted of additional offenses for a specified time period, the citation is dismissed. Consequently, a driver may have several violations under advisement in different courts, or in some cases the same court, and eventually have all of the citations dismissed because no violation was ever submitted for entry to the driving record. As a result, a problem driver could remain on the road with an unblemished driving record.

“While the judiciary has broad discretion over procedural matters, implementation of practice and procedure is controlled by the Michigan Court Rules. To date, neither the Michigan Court Rules nor statute provide for this procedure. Standards relating to driving privileges and traffic safety are set by the Legislature. We recommend that courts discontinue the use of the ‘under advisement’ procedure.”

1.12 Defendant Denies Responsibility

A defendant may deny responsibility for a civil infraction. If the defendant denies responsibility, he or she must appear at a time set either by the citation or as a result of a communication with the court. MCR 4.101(D)(3). Once the defendant has denied responsibility, the defendant must appear for an informal or a formal hearing.*

“A contested action may not be heard until a citation is filed* with the court.” MCR 4.101(E)(1).

*See Parts D and E, below.

*See Section 1.6(B), above, for information on filing a citation.

Part D—Informal Hearings

1.13 Adjudication of Contested Civil Infraction Cases

There are two types of hearings for contested civil infraction cases: informal hearings and formal hearings. The majority of contested cases are heard and decided in informal hearings. An informal hearing will be held unless the defendant expressly requests a formal hearing, or the violation is a railway municipal civil infraction that resulted in “damage to a natural resource or facility” or a vehicle has been impounded. MCR 4.101(E)(2) and MCL 600.8717(4).

Because a defendant may not be represented by an attorney at an informal hearing, if an appearance is filed by the defendant’s attorney, the court should set the matter for a formal hearing. See MCL 257.743(2)(c)(ii).

1.14 The Informal Hearing

An informal hearing will be held except in the following circumstances:

- A party expressly requests a formal hearing. MCR 4.101(E)(2)(a).
- The defendant is represented by an attorney. MCL 257.746(2).
- The civil infraction alleged is a violation of a municipal trailway ordinance that resulted in “damage to a natural resource or facility” or a vehicle has been impounded. MCR 4.101(E)(2)(b) and MCL 600.8717(4)(a)–(b).

An informal hearing is conducted by either a district court magistrate or a district or municipal court judge. It proceeds “in an informal manner so as to do substantial justice according to the rules of substantive law but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications.” MCL 257.746(1).

- “There shall not be a jury at an informal hearing.” MCL 257.746(1).
- “A verbatim record of an informal hearing shall not be required.” MCL 257.746(1). A record is not needed because an appeal from an informal hearing is heard by a judge in the district court at a formal hearing de novo.
- “[T]he person cited may not be represented by an attorney nor may the plaintiff be represented by the prosecuting attorney or attorney for a political subdivision.” MCL 257.746(2).
- “[T]he citing police agency . . . may subpoena witnesses for the plaintiff. The defendant may also subpoena witnesses.” MCL 257.746(3).
- If the court “determines by a preponderance of the evidence that the [defendant] is responsible for a civil infraction, [the court] shall enter an order against the [defendant] as provided in [MCL 257.907*]. Otherwise, a judgment shall be entered for the defendant, but the defendant shall not be entitled to costs of the action.” MCL 257.746(4).
- “The plaintiff and defendant shall be entitled to appeal an adverse judgment entered at an informal hearing.” MCL 257.746(5).

*See Section 1.20, below, for information on orders entered pursuant to MCL 257.907.

A. Failure of Officer to Appear

If the officer that issued the citation fails to appear, the court may either adjourn, i.e., postpone the case, or dismiss the citation. See OAG, 1983, No

6174 (August 3, 1983) (procedural due process requires presence of citing officer at hearing).

B. Procedures Following a Finding of Responsibility

If a defendant is found responsible for a civil infraction, the court must order payment of a civil fine and costs.* In addition to the civil fine and costs, the court may order the defendant to attend and complete a program of treatment, education, or rehabilitation. MCL 257.907(5).

* See Section 1.20, below.

After the court imposes sanctions, the civil fine and costs are payable immediately. MCR 1.110 states that “[f]ines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown.” “Permission may be granted for payment . . . to be made within a specified period of time or in specified installments, but unless permission is included in the order or judgment, the civil fine and costs shall be payable immediately.” MCL 257.907(2).

The court clerk is responsible for preparing the judgment abstract and forwarding it to the Secretary of State following procedures prescribed by statute. MCL 257.732.*

*See Section 1.24, below.

1.15 Appealing the Decision From an Informal Hearing

An appeal following an informal hearing is a matter of right for both parties. MCR 4.101(G)(2) and MCL 257.746(5).

- The appealing party must file a written appeal with the court within seven days of the judgment. MCR 4.101(G)(2). The appeal must be made on a form provided by the court.
- A defendant who appeals must post with the district court, at the time the appeal is taken, a bond equal to the fine and costs imposed. A defendant who has paid the fine and costs is not required to post a bond. MCR 4.101(G)(2)(a) and 4.101(G)(1)(a). “If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs.” MCR 4.101(G)(2)(a).
- “A plaintiff’s appeal must be asserted by the prosecuting authority of the political unit that is responsible for providing the plaintiff’s attorney for the formal hearing. A bond is not required.” MCR 4.101(G)(2)(b).

An appeal from an informal hearing is heard by a judge at a formal hearing. MCL 257.746(5). The formal hearing is held de novo, meaning that the judge

will hear the case as if for the first time; no consideration is given to the earlier hearing. If a judge presided over the informal hearing, a different judge in the same district will preside over the formal hearing. MCL 257.746(5)(a).

If a district court magistrate presided over the informal hearing, a party may appeal the magistrate's decision by right. MCR 4.401(D) states as follows:

“Appeals. Appeals of right may be taken from a decision of the magistrate to the district court in the district in which the magistrate serves by filing a written claim of appeal in substantially the form provided by MCR 7.101(C) within 7 days of the entry of the decision of the magistrate. No fee is required on the filing of the appeal, except as otherwise provided by statute or court rule. The action is heard de novo by the district court.”

This provision mirrors the provisions of MCR 4.101(G) quoted above.

In addition, the district court judge may exercise superintending control of magisterial action. “An action taken by a magistrate may be superseded, without formal appeal, by order of a district judge in the district in which the magistrate serves.” MCR 4.401(C). See also MCL 600.8541(1). In other words, a district judge may reverse the magistrate's decision even when there is no appeal. It is unlikely that a district judge will do this unless the magistrate makes a legal error or exceeds his or her authority.

Part E—Formal Hearings

1.16 The Formal Hearing

A formal hearing will be held when a defendant expressly requests one, or when the decision of an informal hearing is appealed. MCR 4.101(E)(2)(a) and 4.101(G)(2).

In addition, a formal hearing is required when a violation of a municipal railway ordinance is alleged that resulted in “damage to a natural resource or facility” or a vehicle has been impounded. MCR 4.101(E)(2)(b) and MCL 600.8717(4)(a)–(b).

The court is not required to offer a defendant a choice, but if the defendant requests a formal hearing, the court shall schedule a formal hearing. MCL 257.745(5).

- If a hearing date is specified in the citation, that date is for an informal hearing. The defendant or defendant's counsel must contact the court at least 10 days before that date, in person, by representation, by mail, or by phone, to request a formal hearing.

MCL 600.8717(2). The defendant or defendant's counsel must also notify the other parties of the request. MCL 600.8717(3). The request may be made in person, by representation, by mail, or by telephone. *Id.* (If the court is contacted by phone, the court should mail the defendant and defense counsel a confirming notice.)

- If a hearing date is not specified in the citation, the defendant or defendant's counsel must contact the court, in person, by representation, by mail, or by phone, to obtain a scheduled date and time and expressly request a formal hearing. (If the court is contacted by phone, the court should mail the defendant and defense counsel a confirming notice.)

If the decision of an informal hearing is appealed, the court shall schedule a formal hearing. The formal hearing is held *de novo*, meaning that the judge will hear the case as if for the first time; no consideration is given to the earlier hearing. MCR 4.101(G)(2). If a judge presided over the informal hearing, a different judge in the same district will preside over the formal hearing. MCL 257.746(5)(a).

A formal hearing must be conducted by a district court or municipal court judge and takes place under rules more closely resembling those of a trial. MCL 257.747(1).

The defendant must testify when called as a witness and can only invoke the Fifth Amendment privilege against self-incrimination when his or her testimony will in fact tend to incriminate him or her. *People v Ferency*, 133 Mich App 526, 533–35 (1984).

- “There shall not be a jury trial in a formal hearing.” MCL 257.747(4).
- Notice of a formal hearing must be given to the prosecutor or the attorney for the political subdivision who represents the plaintiff. The attorney must appear for the formal hearing. MCL 257.747(3).
- A verbatim record of a formal hearing is required. A record is needed because an appeal from a formal hearing is heard by a judge in circuit court, and the appeal is not heard *de novo*.*
- “[T]he person cited may be represented by an attorney, but is not entitled to appointed counsel at public expense.” MCL 257.747(2).
- The defendant may subpoena witnesses. MCL 257.747(3).
- “[T]he prosecuting attorney or attorney for the political subdivision . . . represents the plaintiff.” That attorney is responsible for issuing subpoenas for the plaintiff's witnesses. MCL 257.747(3).

*See Section 1.17, below, for information on appeals from a formal hearing.

*See Section 1.23, below, for more information on the procedures required by MCL 257.321a.

- As in a civil proceeding, if the court determines by a preponderance of the evidence that the defendant is responsible for a civil infraction, the judge must enter an order against that person as provided in MCL 257.907. MCL 257.747(5).
- An appeal is a matter of right for both parties. MCR 4.101(G)(1).

If the court finds a defendant responsible of a traffic civil infraction by a preponderance of the evidence, the court must inform the Secretary of State of the finding. If the defendant fails to pay a fine or comply with the judgment, the court must initiate the procedures required by MCL 257.321a. MCR 4.101(F)(1)–(2).*

1.17 Appealing the Decision From a Formal Hearing

Appeals from a formal hearing are heard in circuit court.

- “A defendant who appeals must post with the district court, at the time the appeal is taken, bond equal to the fine and costs imposed. A defendant who has paid the fine and costs is not required to post a bond.” MCR 4.101(G)(1)(a).
- For an appeal by right, the appealing party must file a written appeal with the court within 21 days of the judgment. MCR 7.101(B)(1)(a) and MCL 770.3(1)(b) and (c).
- “The circuit court may grant leave to appeal from a trial court or municipal court when . . . (2) the time for taking an appeal [by right] has expired.” MCR 7.103(A)(2). An application for leave to appeal “must be accompanied by an affidavit explaining the delay. The circuit court may consider the length of and the reasons for the delay in deciding whether to grant the application. A delayed application may not be filed more than 6 months after entry of the order or judgment on the merits.” MCR 7.103(B)(6).
- “A plaintiff’s appeal must be asserted by the prosecuting attorney of the political unit that provided the plaintiff’s attorney for the formal hearing. A bond is not required.” MCR 4.101(G)(1)(c).

Part F—Default Proceedings

1.18 Failure to Answer a Citation or Appear for a Scheduled Hearing

The court inevitably faces the question of what to do about “no-shows.” Defendants and police officers* may arrive late or fail to appear at a scheduled hearing. A district judge should develop a clear, no-exceptions policy as to what constitutes a “no show” (e.g., arriving a certain number of minutes late). When one party appears and the other one does not, the court should advise those present of the time by which the absent party must appear. If the absent party appears after that time, the court should treat it as a “no show.”

A person may be found responsible for a civil infraction if he or she fails to appear in response to a citation or other notice, at a scheduled appearance date, or at an informal or formal hearing. MCL 257.6b(d). In such cases, a civil infraction determination is entered as a default judgement.

If a defendant fails to respond to a traffic citation or appear for a scheduled hearing, the court must enter a default determination and impose appropriate sanctions. MCL 257.748 states:

“If the person to whom a citation is issued for a civil infraction fails to appear as directed by the citation or other notice, at a scheduled appearance . . . , at a scheduled informal hearing, or at a scheduled formal hearing, the court shall enter a default judgment against that person and the person’s license shall be suspended pursuant to [MCL 257.321a]* until that person appears in court and all matters pertaining to the violation are resolved or until the default judgment is set aside.”

MCR 4.101(B)(4) states:

“If a defendant fails to appear or otherwise to respond to any matter pending relative to a civil infraction action, the court:

“(a) must enter a default against the defendant;

“(b) must make a determination of responsibility, if the complaint is sufficient;

“(c) must impose a sanction by entering a default judgment;

“(d) must send the defendant a notice of the entry of the default judgment and the sanctions imposed; and

*See Section 1.14(A), above, for information on an officer’s failure to appear.

*See Section 1.26, below, for discussion of license suspension pursuant to MCL 257.321a.

*See Section 1.7, above, for information on nonresident driver's license retention.

“(e) may retain the driver’s license of a nonresident as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date.”*

MCR 4.101(B)(5)(a)–(b) add that “[i]f a defendant fails to appear or otherwise to respond to any matter pending relative to a *traffic* civil infraction, the court (a) must notify the secretary of state of the entry of the default judgment, as required by MCL 257.732 . . . , and (b) must initiate the procedures required by MCL 257.321a” (Emphasis added.)

In addition to the fine and costs ordered, MCL 257.729 allows a magistrate to assess additional costs incurred in compelling a person to appear. The “additional costs shall be returned to the general fund of the unit of government incurring the costs.” *Id.*

Under MCR 4.101(B)(3), “[a] *clerk of the court* may enter a default after certifying, on a form to be furnished by the court, that the defendant has not made a scheduled appearance, or has not answered a citation within the time allowed by statute.” (Emphasis added.)

“If a defendant fails to appear or otherwise to respond to any matter pending relative to a state civil infraction, the court must initiate the procedures required by MCL 257.321a” MCR 4.101(B)(6). (Emphasis added.)

1.19 Setting Aside a Default Judgment

If the defendant fails to answer a citation or appear for a scheduled hearing, the clerk or the court must enter a default judgment against the defendant. In some instances the defendant may have a legitimate excuse. A defendant may ask the court to set aside a default judgment. MCR 4.101(C) states:

“(1) A defendant may move to set aside a default judgment within 14 days after the court sends notice of the judgment to the defendant. The motion

“(a) may be informal,

“(b) may be either written or presented to the court in person,

“(c) must explain the reason for the nonappearance of the defendant,

“(d) must state that the defendant wants to offer a defense to or an explanation of the complaint, and

“(e) must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed.

“(2) For good cause, the court may

“(a) set aside the default and direct that a hearing on the complaint take place, or

“(b) schedule a hearing on the motion to set aside the default judgment.”

The court rule does not define what constitutes “good cause.” Untimely motions to set aside a default judgment may be considered as provided in MCR 2.603(D), which allows a motion to be filed within 21 days after entry of the default judgment. MCR 4.101(C)(3).

Part G—Civil Sanctions and Licensing Sanctions

1.20 Civil Fines, Costs, and Assessments for Civil Infractions

When a defendant is found responsible for a civil infraction, civil sanctions are imposed. Civil sanctions are intended to discourage the driver from violating the law again. Unlike criminal sanctions, the sanctions for civil infractions do not include jail or probation.

Civil sanctions for violations of municipal or state civil infractions are as provided by local ordinance or state law. See MCL 600.8727 and MCL 600.8827.

“The state court administrator shall annually publish and distribute to each district and court a recommended range of civil fines and costs for first-time civil infractions.” MCL 257.907(8). This schedule is not binding on the courts; it is intended as a normative guide for judges and district court magistrates and as a basis for public evaluation of disparities in the imposition of civil fines and costs throughout the state. *Id.*

Each district of the district courts and each municipal court may establish its own schedule of civil fines and costs for civil infractions that occur within the respective district or city (keeping in mind the statutory maximums explained below). If a court does establish a schedule, “it shall be prominently posted and readily available for public inspection.” It does not have to include all civil infractions and the “schedule may exclude cases on the basis of a defendant’s prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses.” MCL 257.907(7).

The state court administrator expects each district court to prepare its own schedule of civil fines and costs, taking into account the various factors within the court affecting costs. Additional costs resulting from multiple appearances, enforcement proceedings for non-appearance, or failure to pay fines and costs, should be computed and added, as applicable, by the individual court.

A district court magistrate or judge may not impose sanctions in excess of the scheduled amounts. MCL 257.745(4), *People v Courts*, 401 Mich 57, 61-62 (1977), and *People v Bogedain*, 185 Mich App 349, 351-52 (1990).

“A court may not increase a scheduled civil fine because the defendant has requested a hearing.” MCR 4.101(F)(1).

A. Civil Fines

If the court finds the defendant responsible for a civil infraction, the court may order the defendant to pay a civil fine. The civil fine shall be payable immediately unless permission for late payment or installments, both within a specified time period, is included in the order or judgment. MCL 257.907(2). Fines imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown. MCR 1.110.

As a general rule,* if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100.00. MCL 257.907(2).

1. Fines Doubled for Moving Violations in Work Zone, Emergency Scene, or School Zone

Fines for moving violations are doubled if the violation occurs in any of the following:

- a work zone,
- at an emergency scene, or
- in a school zone during the period beginning 30 minutes before school in the morning and through 30 minutes after school in the afternoon. MCL 257.601b(1).

MCL 257.79d defines a “work zone” as “a portion of a street or highway that meets any of the following:

“(a) Is between a ‘work zone begins’ sign and an ‘end road work’ sign.

“(b) For construction, maintenance, or utility work activities conducted by a work crew and more than 1 moving vehicle, is

*Exceptions to the general rule are noted in sub-subsections (1) and (2), below.

between a ‘begin work convoy’ sign and an ‘end work convoy’ sign.

“(c) For construction, maintenance, surveying, or utility work activities conducted by a work crew and 1 moving or stationary vehicle exhibiting a rotating beacon or strobe light, is between the following points:

(i) A point that is 150 feet behind the rear of the vehicle or that is the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle, whichever is closer to the vehicle.

(ii) A point that is 150 feet in front of the front of the vehicle or that is the point from which the beacon or strobe light is first visible on the street or highway in front of the vehicle, whichever is closer to the vehicle.”

An “emergency scene” is “a traffic accident, a serious incident caused by weather conditions, or another occurrence along a highway or street for which a police officer, firefighter, or emergency medical personnel are summoned to aid an injured victim.” MCL 257.601b(6)(a).

A “school zone” is defined as “school property on which a school building is located and the area adjacent to the school property that is designated by the signs Except as otherwise provided in subsection (5),* the school zone extends not more than 1,000 feet from the property line of the school in each direction.” MCL 257.627a(1)(c).

*Subsection (5) provides that a school zone may be extended beyond 1,000 feet when specific criteria are met.

2. Mandatory Fines

Several statutes specify the amount of a fine to be assessed. MCL 257.907(2) provides that a person who is determined responsible for one of the following civil infractions shall be ordered to pay the fines as indicated below:

- Disabled parking violations, MCL 257.674(1)(s) or a substantially corresponding local ordinance. The fine assessed shall be at least \$100.00 but not more than \$250.00.
- No proof of insurance, MCL 257.328. The fine assessed shall be \$50.00 or less.
- Children under four not in a child restraint system, MCL 257.710d. The fine assessed shall be \$10.00 or less.

*This is the only civil infraction where the fine and costs are combined into one lump sum. See Section 1.20(B), below, for information on costs.

- Seat belt violations, MCL 257.710e. The fine and costs* assessed shall be \$25.00.
- Failure to stop for a school bus, MCL 257.682 or a substantially corresponding local ordinance. The fine assessed shall be at least \$100.00 but not more than \$500.00.
- With the exception of civil infractions under MCL 257.319g or a substantially corresponding local ordinance, civil infractions that occurred while driving a commercial motor vehicle. The fine shall not exceed \$250.00.
- Motor carrier safety regulations, MCL 257.319g or a substantially corresponding local ordinance. The fine assessed shall not exceed \$10,000.00.

MCL 257.907(2)-(3).

MCL 257.629c(1) provides minimum fines for violating the maximum speed limit on a limited access freeway that has a maximum speed of 55 miles per hour or more:

Miles per hour over the speed limit	Minimum Fine
1– 5	\$10.00
6–10	\$20.00
11–15	\$30.00
16–25	\$40.00
26 and over	\$50.00

3. Distribution of Fines

The civil fine imposed for a violation of the Motor Vehicle Code or any other state statute “shall be exclusively applied to the support of public libraries and county law libraries” MCL 257.909(1).

In general, the civil fine imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Motor Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. MCL 600.8379.

Note: A state police officer will almost always write up a civil infraction under state law. A local municipal police officer will almost always write up a civil infraction under a local ordinance,

if there is one, unless policy within the local municipality dictates otherwise (it's a revenue issue). Obviously, it is an advantage to the local municipalities to have the citing officer write up a civil infraction under the local ordinance, rather than the state statute because both the civil fine and costs go to support the municipality, rather than the fine going to support the libraries.

B. Costs

If the court orders a civil fine, the court must also determine the costs of the action. Taxable costs include all direct and indirect expenses of the plaintiff in connection with the civil infraction to the point of entry of judgment. MCL 257.907(4). This excludes expenses associated with the day-to-day operations of the court. *Board of Library Commissioners of the Saginaw Public Libraries v Judges of the 70th District Court*, 118 Mich App 379, 387-88 (1982). Court costs are limited to \$100.00. MCL 257.907(4).

1. Mandatory Order for Costs

If a defendant is found responsible* for a violation of MCL 257.674(1)(s) (disabled parking violations), the defendant must be ordered to pay the taxable costs as determined by the court pursuant to MCL 257.907(4). MCL 257.907(2) and (4).

If a defendant is found responsible for a violation of MCL 257.682 (failing to stop for a school bus), the court must order the defendant to pay taxable costs pursuant to MCL 257.907(4). MCL 257.907(2) and (4).

If the defendant is found responsible for a violation of MCL 257.710e (seat belt violations), the court must order the defendant to pay a combined fine and cost of \$25.00.* MCL 257.907(2).

If the defendant is found responsible for a civil infraction that occurred while he or she was driving a commercial motor vehicle, the court must order costs. MCL 257.907(3).

2. Orders for Costs Prohibited

The court may not order a defendant who has been found responsible for either of the following to pay costs:

- No proof of insurance, MCL 257.328. The court may only assess a maximum fine of \$50.00.
- Children under four not in a child restraint system, MCL 257.710d. The court may only assess a maximum fine of \$10.00. MCL 257.907(2).

*Either by an admission or by the court after a formal or informal hearing.

*This is the only civil infraction where the fine and costs are combined into one lump sum. See Section 1.20(A), above, for information on fines.

*Or a local ordinance substantially corresponding to a provision in the MVC.

3. Discretionary Order for Costs

Except as noted above in sub-subsections (1) and (2), the court *may* order costs when a person is determined to be responsible for a civil infraction under the Motor Vehicle Code* and the court orders a fine pursuant to MCL 257.907(2). The costs ordered shall not exceed \$100.00. MCL 257.907(4).

4. Distribution of Costs

Except as otherwise provided by law, costs are payable to the plaintiff's general fund. MCL 257.907(4). Nine dollars of any costs ordered under MCL 600.8381(1) before October 1, 2003, but collected on or after that date, shall be paid to the justice system fund created by MCL 600.181. MCL 600.8381(2)(b).

In general, the court costs imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Motor Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. MCL 600.8379.

C. Assessments

Beginning October 1, 2003, former assessments for the Highway Safety Fund, the Secondary Road Patrol and Training Fund, and the Michigan Justice Training Fund were collapsed into a single "justice system" assessment of \$40.00 for traffic-related civil infractions, except for parking violations or violations for which the fines and costs imposed totaled \$10.00 or less. MCL 257.629e; MCL 257.907(14); MCL 600.8381(5).

In addition to any civil fines and costs ordered for the civil infractions listed in MCL 257.907(2) and (3), "the judge or the district court magistrate shall order the defendant to pay a justice system assessment of \$40.00 for each civil infraction determination." MCL 257.907(14). The \$40.00 assessment, which is not a civil fine, is deposited into the state treasury's justice system fund created by MCL 600.181. MCL 257.907(14) and MCL 600.8381(5).

Beginning October 1, 2003, when fines and costs are assessed in non-traffic civil infraction actions, the judge or district court magistrate shall order a defendant to pay the state assessment required by MCL 600.8727(4) (\$10.00 for municipal civil infractions) and MCL 600.8827(4) (\$10.00 for state civil infractions), in addition to any other fines and costs ordered. MCL 600.8381(5).

Assessments ordered before October 1, 2003, but collected on or after that date must be deposited in the justice system fund. MCL 257.907(13).

1.21 Waiving Civil Fines, Costs, and Assessments

“The court may waive fines, costs and fees, pursuant to statute or court rule, or to correct clerical error.” MCR 4.101(F)(4). MCL 257.907(4) prohibits the waiver of assessed fines unless costs are also waived.

The court shall waive civil fines, costs, and assessments under the following circumstances:

- For defective safety equipment violations—if written under MCL 257.683, “upon receipt of certification by a law enforcement agency that repair of the defective equipment was made before the appearance date on the citation.” MCL 257.907(9).
- For child restraint violations—“if the person, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the [statutory] requirements” MCL 257.907(12).
- For failing to produce a valid registration certificate—“upon receipt of a certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid registration certificate that was valid on the date the violation . . . occurred.” MCL 257.907(15).
- For failing to produce a certificate of insurance—“upon receipt of verification by the court that the person, before the appearance date on the citation, produced valid proof of insurance that was in effect at the time the violation . . . occurred. Insurance obtained subsequent to the time of the violation does not make the person eligible for a waiver under this subsection.” MCL 257.907(16).*

*Effective May 1, 2004. 2004 PA 52.

If the court receives verification, before the appearance date on the citation, that the driver possessed valid insurance at the time of the violation, the court *may* waive the fee described under MCL 257.328(3)(c) (a discretionary fee of not more than \$25.00). MCL 257.907(16).

1.22 Treatment, Education, and Rehabilitation Programs

In addition to a civil fine and costs, a defendant may be ordered to attend and complete a program of treatment, education, or rehabilitation. MCL 257.907(5).

The court may not place the defendant on probation for a civil infraction. *People v Greenlee*, 133 Mich App 734, 736 (1984).

1.23 Failure to Comply With an Order or Judgment

*For information on proceeding under MCL 257.908, see subsection (B), below.

A. Mandatory Court Action

If a person fails to comply with an order or judgment issued for fines and costs for a civil infraction violation within the time prescribed by the court, the driver's license shall be suspended pursuant to MCL 257.321a until full compliance occurs. MCL 257.907(11). In addition, the court may also proceed under MCL 257.908. MCL 257.907(11).*

When a judgment from a civil infraction action remains unsatisfied for 28 days or more, the court gives the defendant one final opportunity to resolve the matter. The court does so by sending a 14-day notice to comply to the defendant's last known address. If the defendant still fails to comply within the additional 14 days, the court notifies the Secretary of State, who shall suspend the defendant's license. MCL 257.321a(2). The suspension remains in effect until the defendant satisfies the judgment and pays a license clearance fee of \$45.00. MCL 257.321a(5). Fifty-six days after any amount due and owing remains unpaid, a court must impose a late penalty equal to 20% of the outstanding amount. MCL 600.4803.

Note: MCL 257.321a applies to violations reportable to the Secretary of State under MCL 257.732. See Section 1.24, below, for discussion of reportable offenses. In addition, a court may take action regarding a person who has repeatedly failed to respond to parking violation notices or citations. See MCL 257.321a(7). If the person still fails to respond, the court may notify the Secretary of State, who may refuse to issue or renew that person's license until full compliance occurs. MCL 257.321a(8).

B. Permissive Court Action

A defendant who fails to comply with an order or judgment *may* face these additional sanctions:

- The defendant may be prosecuted for a misdemeanor. MCL 257.321a(1).
- The court may treat a default in payment as civil contempt. The court may then issue an order to show cause or a bench warrant of arrest for the defendant's appearance. MCL 257.908(1).

Unless the defendant shows that the default was not because of his or her intentional refusal to obey the court or a failure of the defendant to make a good-faith effort to get the funds required for payment, the court shall find the default constitutes civil contempt. MCL 257.908(3). Once the court finds the defendant guilty of civil contempt, the court may order the defendant imprisoned until payment is made. *Id.* The term of imprisonment shall be specified in the order and shall not exceed one day for each \$10.00 owed by

the defendant. A person committed shall be given credit toward payment for each day of imprisonment and each day of detention before judgment at the rate of \$10.00 per day. MCL 257.908(5).

A defendant shall not be discharged from custody until one of the following occurs:

- the defendant has been credited with the amount due pursuant to MCL 257.908(5);
- the amount due has actually been collected; or
- the amount due has been satisfied through a combination of the above two methods.

MCL 257.908(6). Civil contempt shall be purged when the defendant is discharged. MCL 257.908(7).

The state or local government may use civil process to collect the judgment, e.g., garnishing the defendant's wages or placing a lien on his or her property. MCL 257.907(10).

If the court finds that the default in payment does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine or costs or the unpaid portion thereof in whole or in part. MCL 257.908(4).

MCR 4.101(F)(3) and MCL 257.321a(9) provide similar procedures for failure to pay a fine and costs or comply with an order or judgment of the court when the defendant has been found responsible for a state civil infraction.

1.24 Reporting Civil Infractions to the Secretary of State

After it finds a defendant responsible for a traffic civil infraction, the court must report its finding to the Secretary of State. MCR 4.101(F)(2)(a). Within 14 days* after the entry of a civil infraction determination or default judgment for violation of the Motor Vehicle Code or a substantially corresponding local ordinance, a municipal judge or court clerk shall prepare and immediately forward to the Secretary of State an abstract of the court record. MCL 257.732(1)(a).

The abstract must be on a form furnished by the Secretary of State and shall be certified by signature, stamp, or facsimile signature to be true and correct. An abstract reporting a civil infraction determination or default judgment must contain the following information:

- “(a) The name, address, and date of birth of the person charged or cited.

*Beginning October 1, 2005, abstracts must be forwarded within five days.

“(b) The number of the person’s operator’s or chauffeur’s license, if any.

“(c) The date and nature of the violation.

“(d) The type of vehicle driven at the time of the violation and, if the vehicle is a commercial motor vehicle, that vehicle’s group designation and indorsement classification.

“(e) The date of the . . . judgment[] or civil infraction determination.

“(f) Whether bail was forfeited;

“(g) Any license restriction, suspension, or denial ordered by the court as provided by law.

“(h) The vehicle identification number and registration plate number of all vehicles that are ordered immobilized or forfeited.

“(i) Other information considered necessary to the secretary of state.” MCL 257.732(3)(a)–(i).

When received by the Secretary of State, an abstract is entered on the driver’s master driving record maintained by the Secretary of State. MCL 257.732(15). Pursuant to MCL 257.732(16), the court should not submit an abstract to the Secretary of state for the following offenses:

“(a) The parking or standing of a vehicle.

“(b) A nonmoving violation that is not the basis for the secretary of state’s suspension, revocation, or denial of an operator’s or chauffeur’s license.

“(c) A violation of chapter II that is not the basis for the secretary of state’s suspension, revocation, or denial of an operator’s or chauffeur’s license.

“(d) A pedestrian, passenger, or bicycle violation, other than a violation of . . . MCL 436.1703, or a local ordinance substantially corresponding to section 703(1) or (2) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, or section 624a or 624b or a local ordinance substantially corresponding to section 624a or 624b.

“(e) A violation of [MCL 257.710e]* or a local ordinance substantially corresponding to [MCL 257.710e].

*MCL 257.710e governs seat belt violations. See Section 2.7 of this volume.

“(f) A violation of section 328(1)* if, before the appearance date on the citation, the person submits proof to the court that the motor vehicle had insurance meeting the requirements of sections 3101 and 3102 of the insurance code of 1956, 1956 PA 218, MCL 500.3101 and 500.3102, at the time the citation was issued. Insurance obtained subsequent to the time of the violation does not make the violation an exception under this subsection.”

*MCL 257.328 governs no proof of insurance. See Section 2.18 of this volume.

1.25 Points and Driver Responsibility Fee

A. Points

A finding of responsibility is entered on defendant’s driving record. Points may also be assessed according to the schedule prescribed by statute. MCL 257.320a. Assessing points is a mandatory function of the Secretary of State; it is not a function of the court. Throughout the benchbook, the specific number of points imposed by the Secretary of State for each specific traffic offense is stated in the section detailing the specific traffic offense.

MCL 257.320a(5) states:

“If more than 1 conviction, civil infraction determination, or probate court disposition results from the same incident, points shall be entered only for the violation that receives the highest number of points under this section.”

B. Driver’s Responsibility Fee

The Secretary of State must impose a “driver responsibility fee” based on the number of points an individual accumulates on his or her driving record.* Assessing driver responsibility fees is a mandatory function of the Secretary of State; it is not a function of the court. MCL 257.732a(1) provides the following schedule of fees:

*Effective October 1, 2003. See 2003 PA 165.

“An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record pursuant to sections 320a and 629c within a 2-year period for any violation not listed under subsection (2) shall be assessed a \$100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under subsection (2), an additional fee of \$50.00 shall be assessed. The secretary of state shall collect the fees described in this subsection once each year that the point total on an individual driving record is 7 points or more.”

Effective May 1, 2004, 2004 PA 52 also added the following provision to MCL 257.732a:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

Only points assigned after the effective date of the statute (October 1, 2003) will be used to calculate the driver responsibility fee. Points existing on a driver’s record prior to the effective date do not count. MCL 257.732a(6).

Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

1.26 License Suspension and Driver’s License Clearance Fee

The court may not suspend the defendant’s driver’s license for a civil infraction. *People v Greenlee*, 133 Mich App 734, 736–37 (1984).

A person is guilty of a misdemeanor if he or she fails to answer a citation, fails to appear, or fails to comply with an order or judgment issued for a civil infraction within the time prescribed by the court. MCL 257.321a(1). In addition, the Secretary of State shall suspend the person’s driver’s license until all matters relating to the violation or the noncompliance are resolved, including payment of all fines, costs, assessments, and a driver license clearance fee. MCL 257.748. See also MCL 257.321a(9) (driver license clearance fee in cases involving state civil infractions).

The driver’s license clearance fee is \$45.00. MCL 257.321a(5)(b).^{*} Under MCL 257.321a(11)(a)-(c), the court must distribute this \$45.00 fee as follows:

- \$15.00 to the Secretary of State;
- \$15.00 to the local funding unit; and
- \$15.00 to the Juror Compensation Reimbursement Fund.

Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

^{*}Effective January 1, 2003. See 2002 PA 741.

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2.1 Introduction and Scope Note

The Motor Vehicle Code contains hundreds of traffic offenses. This chapter includes the most frequent of those offenses that are classified as civil infractions. The discussion in this chapter of each civil infraction includes:

- the name of the offense;
- quotations of the actual statute, or significant parts thereof;
- civil sanctions, if they differ from standard civil sanctions;
- licensing sanctions; and
- issues of importance regarding that offense.

This chapter does not contain motor carrier violations or civil infractions that may be committed only by operation of a motorcycle. See MCL 257.656–257.662 (civil infractions applicable to operation of motorcycles). Other provisions may also govern the operation of motorcycles. See MCL 257.656(4) (“[t]he regulations applicable to motorcycles . . . shall be

considered supplementary to other provisions of this chapter governing the operation of motorcycles”).

2.2 Equipment Violations

A. General Statutes for Equipment Violations

MCL 257.683(1) states:

“A person shall not drive or move or the owner shall not cause or knowingly permit to be driven or moved on the highway a vehicle or combination of vehicles which is in such an unsafe condition as to endanger a person, or which does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in sections 683 to 714a, or which is equipped in a manner in violation of sections 683 to 714a. A person shall not do an act forbidden or fail to perform an act required under sections 683 to 714a.”

Sections 683 to 714a contain provisions with respect to lighting equipment, brakes, mirrors, windshields and windshield wipers, horns and other warning devices, muffler and exhaust systems, tires, etc. MCL 257.683–257.714a.

“Except as otherwise provided in section 698 or 707d,* a person who violates a provision of sections 683 to 714a with respect to equipment on vehicles is responsible for a civil infraction.” MCL 257.683(6).

As a general rule, it is a valid exercise of the police power to require motor vehicles to be equipped with various items of safety equipment. The Motor Vehicle Code prohibits a person from operating a vehicle in an unsafe condition, or which is not properly equipped as required by law. MCL 257.683(1). If a person violates this provision he or she is responsible for a civil infraction. Aside from the statute, the driver’s knowledge of the condition of the vehicle and the area in which it is operated have bearing on the degree of care to be exercised. *Grant v Richardson*, 276 Mich 151, 156–57 (1936).

B. Equipment Violations

Equipment violations* include:

- Brakes—MCL 257.705;
- Brake lights—MCL 257.697;
- Bumper or other energy absorption systems—MCL 257.710c;

*§698 contains a misdemeanor offense for misuse of police or emergency lights, and §707d contains noise restrictions, some of which are misdemeanor offenses.

*See also MCL 257.658a (requirements for seats and footrests on motorcycles).

- Cowl, running board, or back-up lights—MCL 257.698;
- Device causing smoke or flame—MCL 257.682a;
- Failing to maintain equipment—MCL 257.683;
- Flag, light, or lantern on projecting load—MCL 257.693;
- Headlights (defective, improper, or none)—MCL 257.684–257.686, MCL 257.695, MCL 257.699, MCL 257.701, MCL 257.702, and MCL 257.704;
- Headlights (failure to dim)—MCL 257.700;
- Horn, siren—MCL 257.706;
- Mirror and obstruction of view—MCL 257.708 and MCL 257.709;
- Mud flaps (trucks)—MCL 257.714a;
- Muffler or exhaust system—MCL 257.707;
- Parking lights—MCL 257.694;
- Plates (lighting and visibility)—MCL 257.686;
- Reflectors and clearance markers—MCL 257.687–MCL 257.691;
- Safety chains (towing)—MCL 257.721(3);
- Safety glass in bus—MCL 257.711;
- Slow moving vehicles, lights and reflectors—MCL 257.688(g) and MCL 257.703;
- Spotlights and fog lights—MCL 257.696;
- Taillights (defective, improper, or none)—MCL 257.686 and MCL 257.695;
- Television—MCL 257.708b;
- Tires—MCL 257.710;
- Tinted windows—MCL 257.709;
- Trailer, trailer hitch, towing equipment—MCL 257.721;
- Turn signals (defective, improper, or none)—MCL 257.697–257.697a; and
- Windshield, windows, wipers/washers (defective, improper, or none)—MCL 257.708a and MCL 257.709.

C. Reasonable Grounds Required to Stop and Inspect Vehicle

“A police officer on reasonable grounds shown may stop a motor vehicle and inspect the motor vehicle, and if a defect in equipment is found, the officer may issue the driver a citation for a violation of a provision of sections 683 to 714a.” MCL 257.683(2). This statute is, of course, subject to constitutional limitation on stops and searches.

D. Exempted Vehicles

“[S]ections 683 to 714a with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors, except as specifically provided” MCL 257.683(5).

E. Civil Sanctions for Equipment Violations

1. Standard Civil Sanctions for Equipment Violations

Except as noted in sub-subsection (2), below, the general rules for assessing a civil fine and costs apply to equipment violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

2. Special Civil Sanction Provisions for Equipment Violations

The court shall waive the civil fine and costs for a violation of defective equipment, written under MCL 257.683, on receipt of certification by a law enforcement agency that repair was made before the appearance date on the citation. MCL 257.907(9). If the citation for defective equipment is written under any other section, the automatic waiver does not apply.

F. Licensing Sanctions for Equipment Violations

No points are assessed for defective equipment. MCL 257.320a(4). The finding of responsibility is not reported to the Secretary of State. MCL 257.732(16)(b). The Secretary of State has interpreted “defective equipment” to include improper equipment and missing equipment.

However, two points are assessed for improper use of lights. This includes driving with bright lights, driving without lights, failure to dim lights, glaring lights, and too many lights lit. The finding of responsibility is reported to the Secretary of State. In assessing points, the Secretary of State has interpreted “[a]ll other moving violations” to include improper use of lights. See MCL 257.320a(1)(s).

G. Issues

In *People v Pitts*, 222 Mich App 260 (1997), the defendant was found responsible for a violation of MCL 257.709 for having tinted film on the front side windows of his car. The court assessed two points against defendant's driver's license. The Court of Appeals held that assessment of points for the violation was error. *Pitts, supra* at 271. Violation of MCL 257.709 is an "equipment violation" for which no points may be assessed. In reaching this conclusion, the Court of Appeals also sought to distinguish equipment violations and moving violations:

"The prosecutor further argues that a violation of [MCL 257.709] is by definition a moving violation because the language contained within the section states that '[a] person shall not drive a motor vehicle with any of the following' We disagree. The use of the word drive does not convert a violation of [MCL 257.709] into a moving violation in the face of the legislative scheme of which [MCL 257.709] is a part.

"Under the applicable statutory sections (683 to 714a), there is language stating that the vehicle shall not be driven or operated with any of the enumerated defects. MCL 257.700 (multiple-beam headlights), MCL 257.705 (defective brakes), MCL 257.706 (defective horn), MCL 257.707b (defective exhaust system). That being the case, under the prosecution's rationale, operating a car with a defective horn or brakes should be a moving violation subject to the assessment of two points rather than an equipment violation, because the applicable section states that the vehicle shall not be operated in such a manner. This reading would emasculate the statutory handling of equipment and moving violations. . . ." *Pitts supra* at 270–71.

The provisions of MCL 257.709 that prohibit adding tinted film to car windows but allow factory-installed tinting or tinting pursuant to a doctor's order do not violate the Equal Protection clauses of the Michigan and federal constitutions. *People v Pitts*, 222 Mich App 260, 271–75 (1997).

"[A] motor vehicle equipped with multiple tail lamps is in violation of [MCL 257.686(2)] of the Vehicle Code if one or more of its tail lamps is inoperative." *People v Williams*, 236 Mich App 610, 615 (1990).

2.3 Overtaking or Passing

A driver is not compelled to drive behind another, nor does he or she have an exclusive right to drive ahead of another. The driver behind is entitled to pass ahead when it is safe to do so. Certain duties are imposed on the driver of the overtaking vehicle; other duties are imposed on the driver of the vehicle being overtaken.

A. Duties of Driver of Overtaking Vehicle

The responsibility for safe passing rests primarily with the overtaking driver. The attempt to pass must be made under safe conditions and properly managed. “The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left of that vehicle, and when safely clear of the overtaken vehicle shall take up a position as near the right-hand edge of the main traveled portion of the highway as is practicable.” MCL 257.636(1)(a).

Generally, it is unlawful to pass on the right. It is also unlawful to drive off the pavement or the “main traveled” portion of the roadway. MCL 257.637(2). The “main traveled” portion is delineated on the right by a solid white line. Only under conditions permitting the overtaking and passing in safety, in one or more of these instances, is passing on the right permitted:

- when the vehicle overtaken is making or about to make a left turn;
- when vehicles are moving in substantially continuous lanes of traffic on a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction; or
- when vehicles are moving in substantially continuous lanes of traffic on one-way streets, or on a street having sufficient width for two or more lines of traffic moving in the same direction.

MCL 257.637(1)(a)–(c).

If the driver of the vehicle behind had reason to believe that the driver of the vehicle ahead was to make a left-hand turn because of signals, slowing down, or for other reasons, the driver of the vehicle behind attempting to overtake and pass the vehicle ahead must signal his or her intention to do so. *Decker v Woffort*, 360 Mich 644, 648–49 (1960).

B. Duties of Driver of Overtaken Vehicle

“Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.” MCL 257.636(1)(b). In other words, by sounding a warning the driver behind imposes a duty on the driver ahead to yield and move over to the right.

Interpreting a similar former statute, the Michigan Supreme Court held that the statute, which provided that “the driver of a vehicle about to be overtaken shall give way to the right, is not necessarily complied with by the mere fact that such vehicle is in its proper half of the road. The statute contemplates that the driver shall move over towards the edge of the road and thus increase the

space available to the overtaking vehicle.” *Hetler v Holtrop*, 285 Mich 570, 577 (1938).

The driver of the front vehicle should exercise ordinary care for the safety of others in the vehicle behind. If the driver of the front vehicle turns left suddenly, without properly signaling, when the vehicle behind is attempting to pass, that driver may be found responsible for a breach of his or her duty to exercise reasonable care. *Decker v Woffort*, 360 Mich 644, 649–50 (1960).

C. Overtaking and Passing Violations:

Overtaking and passing violations include:

- disobeying “no passing” sign, MCL 257.640;
- failing to give way when overtaken, MCL 257.636(1)(b);
- following too closely, MCL 257.643;
- improper lane use (multiple lane highway), MCL 257.642;
- improper lane use (truck), MCL 257.634(3);
- improper overtaking and passing, MCL 257.636–257.640;
- improper passing on hill or curve, MCL 257.639(1)(a);
- improper passing on right, MCL 257.637;
- improper passing within 100 feet of bridge, viaduct, or tunnel with obstructed view, MCL 257.639(1)(b); and
- trucks tailgating, MCL 257.643a.

D. Civil Sanctions for Overtaking or Passing Violations

The general rules for assessing a civil fine and costs apply to overtaking and passing violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

E. Licensing Sanctions for Overtaking or Passing Violations

1. Improper Passing

Three points are assessed for improper passing. MCL 257.320a(1)(p). The finding of responsibility is reported to the Secretary of State.

2. Following Too Closely, Tailgating, Improper Lane Use

Two points are assessed for following too closely, tailgating, and improper lane use. In assessing points, the Secretary of State has interpreted “[a]ll other

moving violations” to include following too closely, tailgating, and improper lane use. MCL 257.320a(1)(s). The finding of responsibility is reported to the Secretary of State.

2.4 Parking, Stopping, or Standing

The regulatory power of a state legislature with respect to the use of motor vehicles extends to such matters as stopping, standing, and parking. See MCL 257.672–257.676 for Michigan’s statutory provisions governing these matters.

Local authorities may regulate these matters on streets and highways under their jurisdiction; they may also regulate traffic in privately owned parking areas, e.g., shopping center parking, if requested to do so by the owner or the person in charge of general operation and control of the parking area. MCL 257.606(1)(a) and MCL 257.942.

The power to regulate implies the power to exact a fee for the cost of such regulation. Local authorities have the right to establish a system of parking meters on their public streets. *Bowers v City of Muskegon*, 305 Mich 676, 681 (1943).

A. Statutes for Parking

Parking violations include:

- disabled person parking* violations—disregarding sign; improper use of handicap ID, plate, or tag; blocking access aisle or curb-cut, MCL 257.674(1)(s)–(u) and MCL 257.675(5);
- meter violations and metered stall lines, MCL 257.674(1)(x);
- parking in clear vision areas, MCL 257.674a;
- parking on a highway or limited-access highway, MCL 257.672;
- prohibited parking areas, MCL 257.674; and
- an unattended vehicle, MCL 257.676(1).

The Motor Vehicle Code defines parking as “standing a vehicle, whether occupied or not, upon a highway, when not loading or unloading except when making necessary repairs.” MCL 257.38.

MCL 257.672(1) states:

“Outside of the limits of a city or village, a vehicle shall not be stopped, parked, or left standing, attended or unattended, upon the paved or main traveled part of a highway, when it is possible to

*See Section 2.4(C), below, for a detailed discussion of disabled person parking violations.

stop, park, or to leave the vehicle off the paved or main traveled part of the highway. Inside or outside of the limits of a city or village, a vehicle shall not be stopped, parked, or left standing, attended or unattended, upon the paved or unpaved part of a limited access highway, except in an emergency or mechanical difficulty. . . .”

The statute governing parking on the highway is “self-explanatory and unambiguous.” *Ter Haar v Steele*, 330 Mich 167, 174 (1951).

There is a difference between stopping and parking. Parking is merely one form of stopping and implies something more than a mere temporary stop for a necessary reason. *Bensinger v Happyland Shows, Inc*, 44 Mich App 696, 702 (1973), and *Sahms v Marcus*, 239 Mich 682, 684–85 (1927).

MCL 257.674(1) prohibits a vehicle from parking in any of the following places, except when it is necessary to avoid conflict with other traffic or in compliance with the law or directions of a police officer or traffic control device:

“(a) On a sidewalk.

“(b) In front of a public or private driveway.

“(c) Within an intersection.

“(d) Within 15 feet of a fire hydrant.

“(e) On a crosswalk.

“(f) Within 20 feet of a crosswalk, or if there is not a crosswalk, then within 15 feet of the intersection of property lines at an intersection of highways.

“(g) Within 30 feet of the approach to a flashing beacon, stop sign, or traffic-control signal located at the side of a highway.

“(h) Between a safety zone and the adjacent curb or within 30 feet of a point on the curb immediately opposite the end of a safety zone, unless a different length is indicated by an official sign or marking.

“(i) Within 50 feet of the nearest rail of a railroad crossing.

“(j) Within 20 feet of the driveway entrance to a fire station and on the side of a street opposite the entrance to a fire station within 75 feet of the entrance if properly marked by an official sign.

“(k) Alongside or opposite a street excavation or obstruction, if the stopping, standing, or parking would obstruct traffic.

“(l) On the roadway side of a vehicle stopped or parked at the edge or curb of a street.

“(m) Upon a bridge or other elevated highway structure or within a highway tunnel.

“(n) At a place where an official sign prohibits stopping or parking.

“(o) Within 500 feet of an accident at which a police officer is in attendance, if the scene of the accident is outside of a city or village.

“(p) In front of a theater.

“(q) In a place or in a manner that blocks immediate egress from an emergency exit conspicuously marked as an emergency exit of a building.

“(r) In a place or in a manner that blocks or hampers the immediate use of an immediate egress from a fire escape conspicuously marked as a fire escape providing an emergency means of egress from a building.

* * *

“(v) Within 500 feet of a fire at which fire apparatus is in attendance, if the scene of the fire is outside a city or village. However, volunteer fire fighters responding to the fire may park within 500 feet of the fire in a manner not to interfere with fire apparatus at the scene. A vehicle parked legally previous to the fire is exempt from this subdivision.

“(w) In violation of an official sign restricting the period of time for or manner of parking.

“(x) In a space controlled or regulated by a meter on a public highway or in a publicly owned parking area or structure, if the allowable time for parking indicated on the meter has expired, unless the vehicle properly displays 1 or more of the items listed in section 675(8).

“(y) On a street or highway in such a way as to obstruct the delivery of mail to a rural mailbox by a carrier of the United States postal service.

“(z) In a place or in a manner that blocks the use of an alley.

“(aa) In a place or in a manner that blocks access to a space clearly designated as a fire lane.”

“A vehicle shall not be parked in . . . a clear vision area adjacent to or on a highway right of way.” MCL 257.674a.

The Motor Vehicle Code also contains provisions about the manner in which vehicles must be parked. MCL 257.675(1) states:

“Except as otherwise provided in this section and this chapter, a vehicle stopped or parked upon a highway or street shall be stopped or parked with the wheels of the vehicle parallel to the roadway and within 12 inches of any curb existing at the right of the vehicle.”

B. Exceptions to Parking, Stopping, and Standing Violations

A person may stop, park, or leave standing a vehicle in an area otherwise prohibited if it is necessary to avoid conflict with other traffic or if the person is otherwise in compliance with the law or the directions of a police officer or traffic-control device. MCL 257.674(1).

The doctrine of sudden emergency is unnecessary when a parking violation is alleged. The statute expressly excepts otherwise prohibited parking when necessary to comply with the law, e.g., a person is required by law to stop at the scene of an accident and exchange certain information. *Mason v Wurth*, 181 Mich App 129, 131 (1989).

A vehicle may be stopped on a highway for various emergency purposes or mechanical difficulties without violating the laws relating to parking. A vehicle is not in violation of a parking provision if it has stopped:

- because of a breakdown, *Russel v Szczawinski*, 268 Mich 112, 115 (1939);
- to render assistance to a disabled vehicle, *Edison v Keene*, 262 Mich 611, 614 (1930);
- to recover a hat that has blown off, *Sahms v Marcus*, 239 Mich 682, 684-685 (1927); or
- to exchange certain information at the scene of an accident, *Mason, supra* at 131.

C. Disabled Person Parking

A person who has been issued an identification, plate, or tab for persons with disabilities “is entitled to courtesy in the parking of a vehicle. The courtesy shall relieve the disabled person or the person transporting the disabled person from liability for a violation with respect to parking, other than in violation of this act.” MCL 257.675(6).

The “courtesy” to which a disabled person is entitled under MCL 257.675(6) extends to relief from liability for any parking violations other than those violations contained in the Motor Vehicle Code or where the code expressly excepts certain local parking prohibitions regarding traffic and emergency vehicles. *City of Monroe v Jones*, 259 Mich App 443, 453 (2003).

In *City of Monroe*, the Court of Appeals reversed the trial court’s ruling that the defendant was liable for fines and costs associated with parking tickets she received for exceeding the posted time limit for parking spaces near the defendant’s place of employment. The Court stated:

“The language of §675(6) clearly and unambiguously provides, in an all-encompassing manner, that a disabled person shall be relieved of liability for a parking violation except as provided in the statute. There is no dispute that defendant is a disabled person, that her vehicle properly displayed the requisite identification showing her to be disabled, and that she was cited for multiple parking violations.

* * *

“We find that MCL 257.675(6) precludes defendant from being held liable because she is a disabled person and was cited, not for violating the Vehicle Code, but for violating a local time-restriction parking ordinance not contemplated by MCL 257.675(6) as constituting an exception to the liability exemption for disabled persons.” *City of Monroe, supra* at 449, 453.

A law enforcement agency or a local unit of government may implement a program to authorize persons other than police officers, who successfully complete a program of training to issue citations for violations of MCL 257.674(1)(s) and substantially corresponding local ordinances. See MCL 257.675d.

A “disabled person” or a “person with disabilities” is defined by the Motor Vehicle Code as “a person who is determined by a physician, a physician assistant, or an optometrist as specifically provided in this section licensed to practice in this state to have 1 or more of the following physical characteristics:

“(a) Blindness as determined by an optometrist, a physician, or a physician assistant.

“(b) Inability to walk more than 200 feet without having to stop and rest.

“(c) Inability to do both of the following:

(i) Use 1 or both legs or feet.

(ii) Walk without the use of a wheelchair, walker, crutch, brace, prosthetic, or other device, or without the assistance of another person.

“(d) A lung disease from which the person’s forced expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or from which the person’s arterial oxygen tension is less than 60 mm/hg of room air at rest.

“(e) A cardiovascular condition that causes the person to measure between 3 and 4 on the New York heart classification scale, or that renders the person incapable of meeting a minimum standard for cardiovascular health that is established by the American heart association and approved by the department of public health.

“(f) An arthritic, neurological, or orthopedic condition that severely limits the person’s ability to walk.

“(g) The persistent reliance upon an oxygen source other than ordinary air.” MCL 257.19a(a)–(g).

“Disabled person” parking violations designated as civil infractions include disregarding a disabled person parking sign and failing to properly display the disabled person identification, plate, or tab, MCL 257.674(1)(s); parking in an identified access aisle or access lane adjacent to a disabled person parking space and parking that interferes with use of a curb-cut or ramp by persons with disabilities, MCL 257.674(1)(t)–(u).

MCL 257.674(1)(s) provides that a vehicle shall not be parked* in “a parking space clearly identified by an official sign as being reserved for use by disabled persons that is on public property or private property available for public use, unless the individual is a disabled person as described in section 19a or unless the individual is parking the vehicle for the benefit of a disabled person.”

MCL 257.674(1)(t) and (u) prohibit a vehicle from parking in the following places, except when it is necessary to avoid conflict with other traffic or in compliance with the law or directions of a police officer or traffic control:

“(t) In a clearly identified access aisle or access lane immediately adjacent to a space designated for parking by persons with disabilities.

“(u) On a street or other area open to the parking of vehicles that results in the vehicle interfering with the use of a curb-cut or ramp by persons with disabilities.”

Violations of MCL 257.674(1)(s) written under state law require an “official sign.” Violations written under a local ordinance require a sign meeting the specifications in the manual of uniform traffic control devices.

*Except if necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic-control device.

Note: Defendant may argue that notice of disabled person parking was improperly marked, or that a sign was improperly posted. Requirements for proper marking and posting are found in the Michigan Manual of Uniform Traffic Control Devices available from the Michigan Department of Transportation. An excerpt from the manual is available online at www.michigan.gov/documents/mmutcd_part_6_16693_7.pdf (last visited June 29, 2005).

To park in a disabled person parking space, one of the following shall be displayed on the vehicle:

“(i) A certificate of identification or windshield placard issued under section 675 to a disabled person.

“(ii) A special registration plate issued under section 803d to a disabled person.

“(iii) A similar certificate of identification or windshield placard issued by another state to a disabled person.

“(iv) A similar special registration plate issued by another state to a disabled person.

“(v) A special registration plate to which a tab for persons with disabilities is attached issued under this act.” MCL 257.674(1)(s)(i)–(v).

There are several other disabled person parking offenses designated as misdemeanors. See MCL 257.675(15)–(17) and Chapter 3.

D. Unattended Vehicle

“A person shall not allow a motor vehicle to stand on a highway unattended without engaging the parking brake or placing the vehicle in park and stopping the motor of the vehicle. If the vehicle is standing upon a grade, the front wheels of the vehicle shall be turned to the curb or side of the highway.” MCL 257.676(1).

E. Parking Within 500 Feet of Fire Apparatus Stopped in Answer to a Fire Alarm

MCL 257.679(1) states:

“The driver of a vehicle other than a vehicle on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or driver [sic] into or park the vehicle within 500 feet where fire apparatus has stopped in answer to a fire alarm.”

The statute says “shall not follow . . . or park. “Following” is reported to the Secretary of State; “parking” is not. MCL 257.732(1)(a) and MCL 257.732(16)(a).

F. Civil Sanctions for Parking, Stopping, or Standing violations

1. Standard Civil Sanctions for Parking, Stopping, or Standing Violations

Except as noted in sub-subsection (2), below, the general rules for assessing a civil fine and costs apply to parking, stopping, or standing violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

2. Special Civil Sanction Provisions for Disabled Person Parking Violations

A person responsible for a violation of MCL 257.674(1)(s) shall be fined not less than \$100.00 or more than \$250.00 plus costs. MCL 257.907(2). The defendant must be ordered to pay taxable costs for violations of MCL 257.674(1)(s). MCL 257.907(4).

G. Licensing Sanctions for Parking, Stopping, or Standing Violations

No points are assessed for parking, stopping, or standing violations. The finding of responsibility is not reported to the Secretary of State. MCL 257.732(16)(a).

However, *following* within 500 feet of a fire apparatus* is a moving violation, and two points are assessed by the Secretary of State. MCL 257.320a(1)(s). The finding of responsibility is reported to the Secretary of State.

*See Section 2.4(E), above.

H. Issues

In cases not involving a leased vehicle, “proof that the particular vehicle described in the citation . . . was parked in violation of the ordinance or state statute, together with proof from the secretary of state that the defendant named in the citation . . . was at the time of the violation the vehicle’s registered owner, creates in evidence a presumption that the vehicle’s registered owner was the person who parked or placed the vehicle at the point where and at the time that the violation occurred.” MCL 257.675a.

*A police officer may issue a citation to the vehicle's operator if he or she is present. MCL 257.675c(4).

In cases not involving a leased vehicle, a vehicle's registered owner at the time of the violation is "prima facie responsible" for a parking violation designated as a civil infraction. MCL 257.675c(1). "Instead of requiring the local governmental unit issuing the ticket to identify and pursue the particular driver who violated the parking law, the Legislature has created a rebuttable prima facie case based on vehicle registration." *Ford Motor Co v City of Detroit*, 254 Mich App 626, 629 (2003).^{*} A vehicle's owner "may assert as an affirmative defense that the vehicle in question, at the time of the violation, was in the possession of a person whom the owner had not knowingly permitted to operate the vehicle." MCL 257.675c(2). A vehicle's owner may also rebut a prima facie case established under MCL 257.675c(1) with "evidence that someone else is responsible for the violation." *Ford Motor Co, supra* at 630 (the affirmative defense specified in §675c is not the only method of rebutting a prima facie case).

In cases involving leased vehicles, the leased vehicle's owner may shift liability for a parking violation to the lessee "if the leased vehicle owner furnishes proof that the vehicle described in the citation . . . was in the possession of, custody of, or was being operated or used by the lessee or renter of the vehicle at the time of the violation." MCL 257.675b(1).

For vehicle leases or rentals of 30 days or less, the leased vehicle owner may avoid liability by providing, within 30 days after receiving notice of the violation, the following information to the court clerk or parking violations bureau:

"(a) The lessee's or renter's name, address, and operator's or chauffeur's license number.

"(b) A copy of the signed rental or lease agreement or an expedited rental agreement without signature as part of a master rental agreement, including proof of the date and time the possession of the vehicle was given to the lessee or renter and the date and time the vehicle was returned to the leased vehicle owner or the leased vehicle owner's authorized agent under the agreement." MCL 257.675b(2)(a)–(b).

The leased vehicle owner is liable for the violation if the owner does not provide the required information within 30 days, or if the court or parking violations bureau "proceeds against the lessee or renter of the vehicle and the lessee or renter of the vehicle is not . . . found responsible for the violation." MCL 257.675b(3)(a)–(b).

A vehicle's registered owner or a leased vehicle owner who is found responsible for a parking violation may recover damages from the person who actually illegally parked the vehicle. MCL 257.675c(3). A registered owner or leased vehicle owner may also indemnify himself or herself in a written agreement. *Id.* See also *Ford Motor Co, supra* at 633 (long-term lessor may recover damages or indemnify itself in a lease agreement).

2.5 Railroad Crossings

A. Statutes for Railroad Crossings

MCL 257.667(1)–(2) state:

“(1)When a person driving a vehicle approaches a railroad grade crossing under any of the following circumstances, the driver shall stop the vehicle not more than 50 feet but not less than 15 feet from the nearest rail of the railroad, and shall not proceed until the driver can do so safely:

“(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train.

“(b) A crossing gate is lowered or a flagman gives or continues to give a signal. . . .

“(c) A railroad train approaching within approximately 1,500 feet of the highway crossing gives a signal audible from that distance, and the train by reason of its speed or nearness to the crossing is an immediate hazard.

“(d) An approaching train is plainly visible and is in hazardous proximity to the crossing.”

“(2) A person shall not drive a vehicle through, around, or under a crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed or against the direction of a police officer.”

Certain grade crossings may be designated as “stop” crossings and “yield” crossings; and if so designated, appropriate signs are to be erected to notify drivers. A driver’s duties depend on the designation. MCL 257.668(1)–(2).

Stop crossings — “[T]he driver of a vehicle shall stop not more than 50 feet but not less than 15 feet from the railway tracks. The driver shall then traverse the crossing when it may be done in safety.” MCL 257.668(1).

Yield crossings — “Drivers of vehicles approaching a yield sign at the grade crossing of a railway shall maintain a reasonable speed based upon existing conditions and shall yield the right-of-way.” MCL 257.668(2).

B. Railroad Crossing Violations:

Railroad crossing violations include:

- avoiding lowered gates—MCL 257.667(2);
- disobeying a railroad stop sign—MCL 257.668;
- disregarding a crossing gate or signal—MCL 257.667; and
- school bus failing to stop at railroad crossing—MCL 257.1857.

C. School Bus at Railroad Crossing

“[T]he driver of a school bus, before crossing a railroad track at grade, shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail, activate hazard warning lights, turn off all interior switches including fans, heaters, and radios, open the passenger door and driver-side window, and while stopped shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train, and shall not proceed until the driver can do so safely. . . .” MCL 257.1857(1).

The driver of a school bus does not need to stop in any of the following circumstances:

- ♦ where an officer or a traffic-control signal directs traffic to proceed, MCL 257.1857(2);
- ♦ at an abandoned track (e.g., track is covered or removed; signs, signals, and other warning devices are removed), MCL 257.1857(3); or
- ♦ on a freeway or limited access highway protected by a clearly visible, inactivated signal, gate, or barrier, MCL 257.1857(4).

D. Civil Sanctions for Railroad Crossing Violations

The general rules for assessing a civil fine and costs apply to railroad crossing violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

E. Licensing Sanctions for Railroad Crossing Violations

For violations of MCL 257.667(1) for stopping too close to a railroad crossing, the Secretary of State will assess two points. The finding of responsibility is reported to the Secretary of State. In assessing points, the Secretary of State has interpreted “[a]ll other moving violations” to include railroad crossing violations. MCL 257.320a(1)(s).

For failure to obey a traffic control device or enforcement official at a railroad crossing, the Secretary of State will assess three points. MCL 257.320a(1)(p). The finding of responsibility is reported to the Secretary of State.

2.6 Right-of-Way or Failure to Yield

When adjudicating right-of-way cases, the court should consider which driver had the lawful right-of-way and whether or not failure to yield right-of-way caused evasive action to avoid an accident or resulted in an accident. The court should disregard whether or not a collision actually occurred and which vehicle first struck the other: this is not necessary to support a finding of responsibility.

A. Right-of-Way Statutes

MCL 257.649(1)–(5) state:

“(1) The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway.

“(2) When 2 vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

“(3) The right of way rules declared in subsections (1) and (2) are modified at through highways and otherwise as stated in this chapter.

“(4) The driver of a vehicle approaching a yield sign, in obedience to the sign, shall slow down to a speed reasonable for the existing conditions and shall yield the right of way to a vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the driver would be moving across or within the intersection. However, if required for safety to stop, the driver shall stop before entering the crosswalk on the near side of the intersection or, if there is not a crosswalk, at a clearly marked stop line; but if there is not a crosswalk or a clearly marked stop line, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

“(5) The driver of a vehicle traveling at an unlawful speed* shall forfeit a right of way which the driver might otherwise have under this section.”

*See Section 2.8, below, for information on speeding violations.

In Michigan, there is no right-of-way shift (in some states, if one driver forfeits the right-of-way, the other driver automatically gains it).

*See Section 2.9, below, for information regarding who has the right-of-way at controlled intersections.

The right-of-way rules* are modified at through highways and at controlled intersections (signed or signaled).

B. Right-of-Way or Failure to Yield Violations:

Right-of-way or failure to yield violations include:

- failing to keep to the right half of the traveled portion of roadway when passing vehicle going in opposite direction, MCL 257.635(1);
- failing to obey stop, yield, or merge signs, MCL 257.671(3);
- failing to stop at stop sign, MCL 257.649(6);
- failing to yield at yield sign, MCL 257.649(4);
- failing to yield from private drive or alley, MCL 257.652(1);
- failing to yield to emergency vehicles, MCL 257.653;
- failing to yield to funeral processions, MCL 257.654;
- failing to yield to oncoming traffic when merging onto highway, MCL 257.649(7);
- failing to yield to pedestrians, MCL 257.612;
- failing to yield to vehicle on the right at an uncontrolled intersection, MCL 257.649(2);
- failing to yield to vehicle that has already entered an intersection, MCL 257.649(1); and
- turning left at intersection into oncoming traffic, MCL 257.650.

C. Issues in Case Law for Right-of-Way or Failure to Yield Violations

The driver who has the right-of-way need only exercise reasonable or due care under the circumstances. *Placek v City of Sterling Heights*, 405 Mich 638, 669 (1979).

♦ Failing to stop at stop sign, MCL 257.649(6)

“Where . . . a stop sign is placed a considerable distance from the stop intersection, it is generally recognized that the sign serves only to notify motorists of the approaching highway intersection. It does not signify the exact spot at which vehicles are required to stop.” The driver is required by statute “to stop ‘at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.’ . . . He [or she]

need only stop within a fair range of points all of which might be found ‘nearest’ the intersection.” *People v McIntosh*, 23 Mich App 412, 415, 417 (1970).

“[T]raffic violations are strict liability offenses, in which the motorist’s negligence or lack of intent to commit the infraction is irrelevant.” *People v Jones*, 132 Mich App 368, 370–71 (1984). Defendant’s inability to stop at a sign due to icy road conditions is irrelevant.

♦ **Failing to yield to emergency vehicles, MCL 257.653**

The right-of-way given to an emergency vehicle is narrowly construed. “[T]he driver of an emergency vehicle must proceed ‘with due regard for the safety of all persons using the highway.’ . . . What is required is reasonable care for the safety of others under all circumstances.” *Grabowski v Selman*, 25 Mich App 128, 131 (1970).

Other drivers are under a statutory duty to yield the right-of-way to an emergency vehicle. This duty is qualified by explicit statutory language and by judicial construction. “Defendant had a right, under permission of the green light, to cross the intersection unless, by the reasonable exercise of the senses of sight and hearing, he [or she] should have noticed or heard warning to the contrary.” *Keevis v Tookey*, 42 Mich App 283, 287 (1972), citing *City of Lansing v Hathaway*, 280 Mich 87, 89 (1937).

♦ **Failing to yield to funeral processions, MCL 257.654**

A special regulation relating to motor vehicles will prevail over a general one. The special statute giving a funeral procession the right-of-way when going to any place of burial prevails over the general statute regulating traffic by traffic-control device. This is true only if the vehicle displays a flag as described in the statute. *Mentel v Monroe Public Schools*, 47 Mich App 467, 469 (1973).

♦ **Failing to yield from private drive or alley, MCL 257.652**

The sudden emergency doctrine applies where a person is placed in danger as the result of an unusual or unexpected event such as a sudden icy condition that prevents stopping before entry on a public roadway. Such an event would excuse failure to comply with the statutory requirement that a vehicle come to a full stop before entering a public roadway from a private driveway. *Vsetula v Whitmyer*, 187 Mich App 675, 681 (1991).

♦ **Turning left at intersection into oncoming traffic, MCL 257.650**

After entering an intersection under a favorable green light, a driver is not required to stop and wait in the intersection for a change in the traffic light before completing the turn. However, the driver is required to see that the turn

can be done in safety, using due care under all the circumstances. *Neander v Clampett*, 344 Mich 292, 295 (1955).

In limited circumstances, a left-turning motorist may acquire the right-of-way over oncoming traffic. *Donhorst v VanYork*, 23 Mich App 704, 709 (1970). In *Donhorst*, the plaintiff was turning left at an intersection when an oncoming vehicle hit him. The plaintiff argued that the oncoming vehicle accelerated in an attempt to get through the light before it changed to red. The defendant argued that the plaintiff was required to wait for the light to change to red before making the left turn and because the plaintiff did not wait to turn, he was without the right-of-way and was therefore contributorily negligent as a matter of law. The Court of Appeals, citing *Neander v Clampett*, 344 Mich 292 (1955), found no statutory or ordinance authority for the argument that a left turning vehicle must wait for a light to turn red. *Donhorst*, *supra* at 709.

♦ Forfeiture of right-of-way, MCL 257.649(5)

“The apparent legislative intent . . . was to make the forfeiture provision applicable to all right-of-way provisions. . . .” *Holloway v Cronk*, 76 Mich App 577, 581 (1977).

Exception: “[T]he forfeiture provision . . . did not apply where a vehicle traveling on a trunk line highway at an unlawful speed collides with a vehicle entering an intersection after stopping at a red flashing signal.” *Sabo v Beatty*, 39 Mich App 560, 563 (1972), citing *Silkworth v Fitzgerald*, 279 Mich 349 (1937).

Exception: The driver on an arterial highway, the favored driver, “has a right to assume that drivers on subordinate highways will yield him [or her] the right of way; he [or she] is not bound to anticipate negligent acts on the part of those approaching the arterial highway. However, he [or she] has the duty and obligation to exercise reasonable care for his [or her] own protection, and simply because he [or she] is on an arterial highway does not mean he [or she] can disregard the rights of others or drive roughshod over those approaching the highway in a reasonable manner. He [or she] has the continuing duty to exercise reasonable care under the circumstances to avoid a collision.” *Noyce v Ross*, 360 Mich 668, 677–78 (1960).

D. Civil Sanctions for Right-of-Way or Failure to Yield Violations

The general rules for assessing a civil fine and costs apply to right-of-way and failure to yield violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

E. Licensing Sanctions for Right-of-Way or Failure to Yield Violations

Two points are assessed for right-of-way or failure to yield violations. The finding of responsibility is reported to the Secretary of State. In assessing points, the Secretary of State has interpreted “[a]ll other moving violations” to include right-of-way or failure to yield violations. MCL 257.320a(1)(s).

2.7 Safety Belt Violations

These violations include child restraint and safety belt violations. Both child restraint and safety belt violations can be enforced as a primary action. In other words, a driver may be stopped solely because the officer can see that the driver’s child is not properly restrained, or that the driver or front-seat passenger is not wearing his or her safety belt.

Note: MCL 257.710e(5) provides that “[i]f after December 31, 2005 the office of highway safety planning certifies that there has been less than 80% compliance with the safety belt requirements of this section during the preceding year, then enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of another section of this act.”

A. Child Restraint Violations

The child restraint statute, MCL 257.710d(1), states:

“[E]ach driver transporting a child less than 4 years of age in a motor vehicle shall properly secure that child in a child restraint system that meets the standards prescribed in 49 C.F.R. 571.213.”

Note: Whether a child is properly secured, whether a child restraint system is federally approved, or whether a safety belt is properly adjusted and fastened are determined by the federal motor vehicle safety standards under Title 49 of the Code of Federal Regulations. See 49 CFR 571.

“Properly secure” means that children less than 20 pounds (infants) must face the rear of the vehicle. Federal motor vehicle safety standards require the manufacturer to label the car seat and include printed instructions. 49 CFR 571.213, §§5.5–5.6.

Exceptions:

“The secretary of state may exempt . . . a class of children from the requirements of this section, if the secretary of state determines that the use of the child restraint system . . . is impractical because of physical unfitness, a medical problem, or body size. . . .” MCL 257.710d(6).

“This section does not apply to any child being nursed.” MCL 257.710d(2).

“This section does not apply if the motor vehicle being driven is a bus, school bus, taxicab, moped, motorcycle, or other motor vehicle not required to be equipped with safety belts under federal law or regulations.” MCL 257.710d(3).

B. Failing to Wear Safety Belt**1. Statute**

MCL 257.710e(3) states:

“Each driver and front seat passenger of a motor vehicle operated on a street or highway in this state shall wear a properly adjusted and fastened safety belt, except that a child less than 4 years of age shall be protected as required in section 710d. If there are more passengers than safety belts available for use, and all safety belts are being utilized in compliance with this section, the driver of the motor vehicle is in compliance with this section.”

“Properly adjusted and fastened” is defined by the federal motor vehicle safety standards. 49 CFR 571.208, §4.1.1.3.1(a).

“Each driver of a motor vehicle transporting a child 4 years of age or more but less than 16 years of age in a motor vehicle shall secure the child in a properly adjusted and fastened safety belt. If the motor vehicle is transporting more children than there are safety belts available for use, all safety belts available in the motor vehicle are being utilized in compliance with this section, and the driver and all front seat passengers comply with subsection (3), then the driver of a motor vehicle transporting a child 4 years of age or more but less than 16 years of age for which there is not an available safety belt is in compliance with this subsection, if that child is seated in other than the front seat of the motor vehicle. However, if that motor vehicle is a pickup truck without an extended cab or jump seats, and all safety belts in the front seat are being used, the driver may transport such a child in the front seat without a safety belt.” MCL 257.710e(4).

2. Exceptions

This section shall not apply to the driver or passenger of:

- a motor vehicle made before January 1, 1965;
- a bus, including a school bus;
- a motorcycle;
- a moped;
- a motor vehicle if the driver or passenger possesses a doctor's certificate stating that the person is unable to wear a safety belt because of a physical or medical reason;
- a motor vehicle not required by federal law to have safety belts;
- a commercial or U.S. postal vehicle that frequently stops for pickup and delivery of goods and services; or
- a motor vehicle operated by a rural carrier for the U.S. postal service while working. MCL 257.710e(1)–(2).

C. Civil Sanctions for Safety Belt Violations

1. Standard Civil Sanctions for Safety Belt Violations

Except as noted in sub-subsection (2), below, the general rules for assessing a civil fine and costs apply to safety belt violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

2. Special Civil Sanctions for Safety Belt Violations

Child restraint violations. The civil fine for child restraint violations shall not exceed \$10.00. The court may not order the defendant to pay costs. MCL 257.907(2).

The court shall waive the civil fine if the defendant, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a proper child seating system. MCL 257.907(12).

Failing to wear a safety belt. The civil fine and costs for failing to wear safety belt shall be \$25.00. MCL 257.907(2).

D. Licensing Sanctions for Safety Belt Violations

For child restraint violations, no points are assessed. The finding of responsibility is not reported to the Secretary of State. MCL 257.710d(5). For

safety belt violations, no points are assessed. MCL 257.710e(13). The finding of responsibility is not reported to the Secretary of State. MCL 257.732(16)(e).

2.8 Speed Violations

In Michigan, there are three types of speed laws:

- basic speed laws;
- absolute speed laws; and
- prima facie speed laws.

A. Basic Speed Laws

“A person driving a vehicle on a highway shall drive at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other condition then existing. A person shall not drive a vehicle upon a highway at a speed greater than that which will permit a stop within the assured, clear distance ahead.” MCL 257.627(1).

The statute identifies two concepts: careful and prudent speed and assured clear distance ahead. Underlying the concept of careful and prudent speed is the premise of ordinary care, e.g., the rate of speed that the average person would conclude to be proper, considering all conditions. The court should consider these conditions in rendering a decision. Some of the considerations include:

- weather (rain, wind, snow, etc.);
- time of day (day or night);
- road surface (rough, wet, icy, etc.);
- sight limitations (hills, curves, parked cars, etc.);
- traffic volume (pedestrians, other types of vehicles); and
- vehicle type (stopping distance or braking capacity).

The concept of assured clear distance ahead is typically applied to accident cases because the collision itself is evidence of the inability to stop within a clear distance ahead. The ability to stop as a measurement of speed is contingent on several factors, including:

- driver’s perception and reaction time;
- road surface conditions; and

- the vehicle's braking capacity.

♦ **Careful and prudent speed, MCL 257.627(1)**

"The rate of speed [of an automobile] must always be reasonable and proper, having due regard to existing conditions at the time and place, the lives and safety of the public being the test." *Patterson v Wagner*, 204 Mich 593, 602 (1919).

The driver "must always have regard for the situation, and must drive his [or her] car in a reasonably safe manner so as not to endanger the persons [or] property of others, and if to accomplish this it is necessary to drive at a lesser speed than the maximum provided by statute, he [or she] must do so." *Bade v Nies*, 239 Mich 37, 39 (1927).

"Speed may be unreasonably slow as well as unreasonably rapid." *Szost v Dykman*, 252 Mich 151, 153 (1930).

♦ **Assured clear distance ahead, MCL 257.627(1)**

"The 'assured clear distance' rule . . . is not confined . . . to the ability to observe fixed objects ahead; it includes moving objects as well." *Buchel v Williams*, 273 Mich 132, 137 (1935).

The assured clear distance rule also applies when there is a collision with objects not part of the road, but the rule does not apply where the collision is caused by running into a hole or bump in the road. *Marek v City of Alpena*, 258 Mich 637, 642 (1932).

"[A] driver is not in violation of the assured-clear-distance-ahead rule . . . if he [or she] has been driving so as to be able to stop within the assured clear distance ahead but that assured clear distance ahead is suddenly and unexpectedly invaded by another vehicle coming from one side at a time and place such that the first driver cannot avoid a collision with it." *Hoag v Fenton*, 370 Mich 320, 325–26 (1963), citing *Cole v Barber*, 353 Mich 427 (1958) and *Barner v Kish*, 341 Mich 501 (1954).

♦ **Doctrine of sudden emergency**

The doctrine of sudden emergency avoids the harshness of the assured clear distance statute. It applies "if there is any evidence which would allow a jury to conclude that an emergency existed within the meaning of that doctrine." *Wright v Marzolf*, 34 Mich App 612, 613–14 (1971).

The doctrine of sudden emergency is a limited exception to the rule that a violation of the assured clear distance statute constitutes negligence per se. "Not every difficulty that a motorist encounters is a condition that will[, under the sudden emergency doctrine,] excuse his [or her] liability. The condition must be extraordinary and 'totally unexpected.'" *Spillars v Simons*, 42 Mich

App 101, 105–06 (1972). Another person’s failure to signal for a turn is not an unexpected emergency that would bring into play the doctrine of sudden emergency.

This is an expression of the doctrine of sudden emergency in its classic form: “One who suddenly finds himself [or herself] in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence if he [or she] fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he [or she] finds himself [or herself] is brought about by his [or her] own negligence.” *Walker v Redbeuhr*, 255 Mich 204, 206 (1931), and *Paton v Stealy*, 272 Mich 57, 62 (1935).

B. Absolute Speed Laws

Absolute speed limits are determined two ways: First, the absolute speed limits may be set by traffic control order as a result of a speed study based on engineering and traffic investigations. This is rare. All absolute speed limits must be set in compliance with statute guidelines (road design features, accident history, pedestrian crossings, etc.) made public record, filed with the county clerk, and posted to put motorists on notice.

Second, the Legislature has determined absolute maximum speeds for certain areas and certain motor vehicles. Absolute speed laws do not require special sign posting. If the defendant is charged with violating an absolute speed law, the only question to be answered is whether the defendant was in fact exceeding the absolute speed limit. Examples include:

- 55 mph—all highways where maximum speed limit is not otherwise fixed, MCL 257.628(3);
- 45 mph—work zones* due to highway construction, maintenance, or surveying, MCL 257.627(9);
- 70 mph—on all freeways. MCL 257.628(9). The statute permits the state Department of Transportation to designate up to 170 miles of freeway on which the speed limit may be lower than 70 mph. *Id.* MCL 257.628(9) establishes the minimum speed on all freeways at 45 mph, unless otherwise posted or made necessary for safe operation.
- 55 mph—motor vehicles pulling trailers weighing over 750 lbs, MCL 257.627(5);
- 50 mph—school bus (55 mph on a limited access highway or freeway), MCL 257.627(7) and MCL 257.627b; and
- 55 mph—tractors, trucks, or combinations weighing over 10,000 lbs (35 mph when reduced loads are enforced), MCL 257.627(6).

*MCL 257.79d defines “work zone” as the phrase is used in MCL 257.627(9).

C. Prima Facie Speed Laws

State, county, and local lawmakers are granted authority by statute to set prima facie speed limits on roads maintained by the state transportation commission, the county road commission, the city, or the village. A prima facie speed limit is determined by the Legislature, county, or local municipality to be a reasonable and safe maximum or minimum speed. That speed limit is determined to be the reasonable, safe, and prudent speed under conditions found to exist.

Prima facie evidence is evidence that would, if not contested, establish a fact. If it is shown that the defendant exceeded a prima facie speed limit, that showing is sufficient unless the defendant can prove, by a preponderance of the evidence, that the local ordinance regulating the speed of motor vehicles is unreasonable. This is different from an absolute speed limit case in which the only question to answer is whether the defendant was in fact exceeding the absolute speed limit. Example of prima facie speed limits include:

- 25 mph—business districts, residential areas, and public parks, MCL 257.627(2);
- 15 mph—mobile home parks, MCL 257.627(4); and
- 25 mph—school zones (in force not less than 30 minutes but no more than one hour before and after the regularly scheduled school session), MCL 257.627a(2).

1. Business Districts, Residential Districts, and Public Parks

MCL 257.627(2)(a)–(b) state:

“(2) Subject to subsection (1)* and except in those instances where a lower speed is specified in this chapter, it is prima facie lawful for the driver of a vehicle to drive at a speed not exceeding the following, except when this speed would be unsafe:

“(a) 25 miles an hour on all highways in a business or residence district as defined in this act.

“(b) 25 miles an hour in public parks unless a different speed is fixed and duly posted.”

2. Mobile Home Parks

MCL 257.627(4) states:

“The driver of a vehicle in a mobile home park as defined in . . . MCL 125.2302, shall drive at a careful and prudent speed, not greater than a speed which is reasonable and proper, having due regard for the traffic, surface, width of the roadway, and all other

*Subsection (1) governs basic speed laws. See Section 2.8(A), above.

conditions existing, and not greater than a speed which will permit a stop within the assured clear distance ahead. It is prima facie unlawful for the driver of a vehicle to drive at a speed exceeding 15 miles an hour in a mobile home park as defined in . . . MCL 125.2302.”

3. School Zones

MCL 257.627a(2) states:

*Subsection (4) gives local authorities the power to increase or decrease the prima facie speed limit within a school zone under their jurisdiction.

“Except as provided in subsection (4),* the prima facie speed limit in a school zone, which shall be in force not less than 30 minutes but not more than 1 hour before the first regularly scheduled school session until school commences and from dismissal until not less than 30 minutes but not more than 1 hour after the last regularly scheduled school session, and during a lunch period when students are permitted to leave the school, shall be 25 miles an hour, if permanent signs designating the school zone and the speed limit in the school zone are posted at the request of the school superintendent. The signs shall conform to the Michigan manual of uniform traffic control devices.”

D. Speed Violations

Speed violations include:

- exceeding authorized speed, MCL 257.628;
- exceeding prima facie or posted speed limit, MCL 257.629(6);
- exceeding speed limit, MCL 257.627–257.629;
- exceeding speed limit in work zone, MCL 257.627(9);
- exceeding speed limit in mobile home park, MCL 257.627(4);
- exceeding speed limit in school zone, MCL 257.627a;
- exceeding speed limit on limited-access freeway, MCL 257.629c;
- exceeding statewide speed limits, MCL 257.628;
- speeding, energy emergency, MCL 257.629b;
- violating basic speed law (driving too fast or too slow), MCL 257.627; and
- violating freeway speed law (driving below minimum speed), MCL 257.628.

E. Civil Sanctions for Speed Violations

1. Standard Civil Sanctions for Speed Violations

Except as noted in sub-subsection (2), below, a civil fine and costs apply to speed violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

2. Special Civil Sanctions for Speed Violations

The Motor Vehicle Code provides a minimum civil fine for violating the maximum speed limit on a limited access freeway on which the maximum speed limit is 55 mph or more:

1–5 mph over—\$10.00

6–10 mph over—\$20.00

11–15 mph over—\$30.00

16–25 mph over—\$40.00

26 mph or more over—\$50.00

MCL 257.629c(1). However, this schedule does not apply to a person driving a passenger vehicle drawing another vehicle or trailer, or to a person driving a school bus. MCL 257.629c(2).

F. Licensing Sanctions for Speed Violations

a. Violation of basic speed law — two points, MCL 257.320a(1)(s).

The finding of responsibility is reported to the Secretary of State.

b. Failure to drive minimum speed on freeway (MCL 257.628(5))— two points, MCL 257.320a(1)(s).

The finding of responsibility is reported to the Secretary of State.

c. Speed violations exceeding the lawful maximum:

- by 10 mph or less — two points, MCL 257.320a(1)(o);
- by more than 10 mph, but not more than 15 mph — three points, MCL 257.320a(1)(m);
- by more than 15 mph — four points, MCL 257.320a(1)(h).

The finding of responsibility is reported to the Secretary of State.

Speed violations established by executive order issued during a state of energy emergency have the same point schedule. MCL 257.320a(7).

The finding of responsibility is reported to the Secretary of State.

d. Notwithstanding the assessment of points above, the Motor Vehicle Code further sets out a point schedule for violating the maximum speed limit on a limited access freeway that has a maximum speed limit of 55 miles per hour or more:

- 1–5 mph over—0 points
- 6–10 mph over—1 points
- 11–15 mph over—2 points
- 16–25 mph over—3 points
- 26 mph or more over—4 points

MCL 257.629c(1). The finding of responsibility is reported to the Secretary of State.

e. Speed violations in work zone exceeding the lawful maximum (MCL 257.627(9)):

- by 10 mph or less — three points, MCL 257.320a(1)(n).
- by more than 10 mph but not more than 15 mph — four points, MCL 257.30a(1)(l).
- by more than 15 mph — five points, MCL 257.320a(1)(g).

The finding of responsibility is reported to the Secretary of State.

G. Evidence in a Speed Case

Evidence in a speed case may be presented by testimony of the defendant, the complaining officer, or a witness, or by physical evidence. The court must determine whether that evidence is admissible. Although the rules of evidence are not observed in a civil infraction case, the court must still determine whether the evidence is relevant and the witness competent.

“[A]dmissions made by a driver to a police officer are admissible in any court proceeding.” *People v Chandler*, 75 Mich App 585, 590 (1976).

Frequently, officers will appear in court offering physical evidence used to determine speed. This physical evidence may include speed calculations from speed measurement devices such as radar, laser, and visual average speed computer and recorder (VASCAR). It may also include speed calculations

based on the length of skidmarks or tire tracks. Police officers can derive speed estimates based on evidence collected regarding the length of skidmarks or tire tracks, the tire-roadway friction interaction, and the types and condition of roadways (surface grade, wet, dry, etc.). Speed determinations are valid only if the officer had proper training and experience.

1. Estimates of Speed

“[A witness] need not qualify as an expert in order to testify as to matters one learns through ordinary observation, such as the rate of speed at which a vehicle is going, provided a witness is fully interrogated as to the knowledge upon which his [or her] judgment is based . . .” *Hicks v Bacon*, 26 Mich App 487, 493 (1970), citing *Stehouwer v Lewis*, 249 Mich 76, 81 (1929).

“An opinion of the speed of a vehicle based on sound alone is properly excluded.” *Green v Richardson*, 69 Mich App 133, 140 (1976).

The testimony of the investigating officer must include “a sufficient basis and connecting link between the tire tracks and defendant’s car to render admissible testimony concerning tracks observed . . .” *Wilhelm v Skiffington*, 360 Mich 348, 351 (1960).

The competency of testimony as to speed is not determined by specific distance or time but by causal connection or contact with the accident. *Hicks v Bacon*, 26 Mich App 487, 493 (1970), citing *Bryant v Brown*, 278 Mich 686, 688 (1937). In *Hicks*, the Court reviewed several previous Supreme Court decisions where a witness’s testimony regarding the speed of a vehicle was not admitted because the witness only observed the vehicle for a short distance before the accident. The Court also reviewed several cases where the Supreme Court upheld the admission of a witness’s testimony regarding speed when the witness observed the vehicle for 40 feet before an accident. In conclusion the Court of Appeals held,

“Any attempt to reconcile these cases is futile. Probably the better rule is that of the *Stehouwer* [*v Lewis*, 249 Mich 76 (1929)] and *Bryant* [*v Brown*, 278 Mich 686 (1937)] decisions; i.e., that speed testimony should be admitted where the jury is made aware of the witness’s opportunity to observe so that the admission of such testimony is not made contingent upon specific times or distances and the weight to be given this testimony is for the jury to decide.” *Hicks, supra* at 494.

“[E]stimates of speed based solely on opinions of the force of impact are not admissible. . . .” *Hicks v Bacon*, 26 Mich App 487, 494 (1970), citing *Jackson v Trogan*, 364 Mich 148 (1961), and *Hinderer v Ann Arbor RR Co*, 237 Mich 232 (1927). However, estimates of speed based upon the observation of the speeding vehicle and the resulting force of the collision is admissible. *Hicks, supra*, at 494-95.

2. Speed Measuring Devices

♦ Radar

Radar (actually an acronym for “radio detection and ranging”) operates on the Doppler principle: the frequency of radio waves changes in direct proportion to the speed of an object. It is a radio device that merely detects the presence of a moving object and determines its speed. Radar sends and receives a signal; it can be detected by the driver of the vehicle whose speed is being measured if the driver has a radar detector. See MJI’s *New Magistrate Traffic Adjudication Manual, 4th Edition* (MJI, 2003), Unit 6, for more discussion.

In a speed case involving moving radar (the officer’s vehicle is moving rather than still), the following seven guidelines must be met in order to allow speed readings from a radar speedmeter into evidence. It must be shown that:

- 1) The officer operating the device has adequate training and experience in its operation.
- 2) The radar device was in proper working condition and properly installed in the patrol vehicle at the time of the issuance of the citation.
- 3) The radar device was used in an area where road conditions were such that there was a minimal possibility of distortion.
- 4) The input speed of the patrol vehicle was verified and the speedometer of the patrol vehicle was independently calibrated.
- 5) The speedmeter was retested at the end of the shift in the same manner that it was tested before the shift and the speedmeter was serviced by the manufacturer or other professional as recommended.
- 6) The particular radar operator was able to establish that the target vehicle was within the operational area of the beam at the time the reading was displayed.
- 7) The particular unit has been certified for use by an agency with some demonstrable expertise in the area.

People v Ferency, 133 Mich App 526, 542–44 (1984).

The requirement that a speedmeter be serviced *as recommended* “does not preclude the possibility that *no* service may be recommended.” *City of Adrian v Strawcutter*, 259 Mich App 142, 145 (2003). The defendant in *Strawcutter* argued that evidence obtained from the radar speedmeter used to cite him for speeding was improperly admitted because the speedmeter had not been

serviced for approximately 13 months, and the police officer was unaware of any servicing guidelines recommended by the speedometer's manufacturer. *Id.* at 143. On appeal, the circuit court found that the officer's lack of knowledge about the manufacturer's service requirements constituted a failure to comply with the requirements of *People v Ferency*. *Id.* at 144. The Michigan Court of Appeals disagreed and affirmed the district court's finding that the defendant was responsible for a speeding violation. *Id.* at 145. According to the *Strawcutter* Court, "[the police officer] complied with the relevant servicing requirements under *Ferency*: no servicing was recommended and no servicing was performed." *Id.*

The Michigan Office of Highway Safety Planning established the Michigan Radar Task Force in 1979 and later changed the name to the Michigan Speed Measurement Task Force. They approved a "Standard for the Procurement of Speed-Measurement Equipment" in July of 2000. Copies are available from the Michigan Speed Measurement Task Force and on its website at www.michigan.gov/documents/sm_std_11134_7.pdf (last visited June 29, 2005).

The Michigan Speed Measurement Task Force has also prepared the "Guidelines for the Adjudication of Radar Speeding Cases." Copies are available from the Michigan Speed Measurement Task Force and on its website at www.michigan.gov/documents/ADJUDICATIONOFRADARSPEEDING_CASES_11138_7.pdf (last visited June 29, 2005).

The following are the recommended guidelines:

"1. The Michigan Speed Measurement Task Force recommends that the guidelines listed in the Court of Appeals ruling [in *People v Ferency*, 133 Mich App 526 (1984)] be considered valid for both stationary-mode and moving-mode radar citations.

"2. The Michigan Speed Measurement Task Force recommends that speed-measuring radar evidence be admissible in court only if the radar device used was certified, as determined by the Michigan Speed Measurement Task Force.

"3. The Michigan Speed Measurement Task Force recommends that it is not necessary to have radar devices periodically recertified because a properly trained radar operator will be able to determine when a specific device is malfunctioning.

"4. The Michigan Speed Measurement Task Force recommends that speed measuring radar device evidence be admissible in court only if the radar operator was certified [by] the Michigan Commission On Law Enforcement Standards at the time the radar speed reading was made.

“5. Only if the radar device and radar operator were each properly certified should issues related to this particular case be addressed in order to determine if the specific facts warrant that the defendant be held responsible. Specific points that should be covered, once the certification issues have been dispensed with, include:

“a. Was the radar device in proper working order? And when was this verification done?

“b. Was the patrol vehicle’s speedometer independently calibrated? And, if so, when was it last calibrated?

“c. What mode of operation was used (e.g., stationary or moving)?

“d. Was the radar device being used in an area where road conditions or environmental conditions might have led to spurious display readings?

“e. What was the nature of the roadway (i.e., type of roadway, general visibility, terrain, visual obstructions, and volume of traffic flow)?

“f. What was the target-tracking history (i.e., visual observations of the target, operational area of the radar beam, characteristics of the Doppler-audio signal, display readings, and correlation between the patrol speed display window reading and the reading from the patrol vehicle’s speedometer -- the latter only being needed during moving-mode operation).

“In summary, the Michigan Speed Measurement Task Force recommends that the defendant be held responsible for the speeding infraction if the following three conditions are met: first, the radar device was certified as determined by the Michigan Speed Measurement Task Force; second, the radar operator was certified by the Michigan Commission on Law Enforcement Standards; and third, the preponderance of the forensic evidence related to this specific case indicates that the speeding infraction did occur as stated by the radar operator.”

♦ **Visual Average Speed Computer and Recorder (VASCAR)**

VASCAR operates on the time-distance principle. It is a computer device that allows the officer to enter a precisely measured distance and the time it took the target vehicle to travel that same distance. The computer then calculates the average speed of the target vehicle. VASCAR does not send or receive a signal; therefore, it cannot be detected by the driver of the vehicle whose

speed is being measured. See MJJ's *New Magistrate Traffic Adjudication Manual, 4th Edition* (MJJ, 2003), Reference Section, pp 45–54, for more information.

There are no appellate cases on the admissibility of VASCAR. Although the rules of evidence are not observed in a civil infraction case, the court must still determine whether the evidence is relevant and the witness competent.

♦ Laser

Laser operates on the time-distance principle. It emits an invisible infrared light beam that measures both speed and distance. Laser does send and receive a signal, but it is much more difficult to detect than radar.

There are no appellate cases on the admissibility of laser. Although the rules of evidence are not observed in a civil infraction case, the court must still determine whether the evidence is relevant and the witness competent.

2.9 Stop and Go, Signs and Signals

The state of Michigan has adopted a uniform system of traffic control devices. MCL 257.608. This means, insofar as is practical, that the design, shape, and color scheme of Michigan traffic signs, signals, and guideposts will be uniform with those in other states.

Note: Defendant may argue that a sign was improperly posted or a signal was improperly placed. Requirements for proper marking and posting are found in the Michigan Manual of Uniform Traffic Control Devices. It is available from the Michigan Department of Transportation, Traffic and Safety Division or online at www.michigan.gov/documents/mmutcd_part_6_16693_7.pdf (last visited June 29, 2005).

A. Stop Signs

MCL 257.649(6) states:

“Except when directed to proceed by a police officer, the driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection, or if there is not a crosswalk shall stop at a clearly marked stop line; or if there is not a crosswalk or a clearly marked stop line, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After having stopped, the driver shall yield the right of way to a vehicle which has entered the intersection from another highway or which is approaching so closely on the highway as to

constitute an immediate hazard during the time when the driver would be moving across or within the intersection.”

“Where . . . a stop sign is placed a considerable distance from the stop intersection, it is generally recognized that the sign serves only to notify motorists of the approaching highway intersection. It does not signify the exact spot at which vehicles are required to stop.” The driver is required by statute “to stop ‘at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.’ . . . He [or she] need only stop within a fair range of points all of which might be found ‘nearest’ the intersection.” *People v McIntosh*, 23 Mich App 412, 415, 417 (1970).

“[A] stop sign is a direction, not merely a caution, to drivers entering a through street to stop.” *Rife v Colestock*, 297 Mich 194, 197 (1941).

A stop sign is a warning of possible danger at an intersection. It imposes a duty on the driver, before attempting to cross or turn at the intersection, to stop the vehicle at a point from which approaching traffic can be seen. After stopping, the driver has a duty to make proper observation before entering the intersection and to keep the vehicle under control as to enable him or her to stop at once if observation discloses approaching vehicles. The driver stopped at a stop sign must yield the right-of-way to a vehicle approaching on the cross street. *Shoniker v English*, 254 Mich 76, 80–81 (1931).

“The purpose of a stop street is to afford traffic on it a preference. It is the duty of one arriving at such street not only to stop but so to remain until a reasonable opportunity to proceed appears. It would be contrary to all custom, general understanding, and the purpose of a stop street, to hold . . . that, after stopping, the driver immediately acquires the right of way as against all vehicles on the stop street which have not reached the intersection.” *Leader v Straver*, 278 Mich 234, 236 (1936).

The driver who is traveling on the favored street or highway may assume that a driver approaching a stop sign will stop. The driver who is traveling on the favored street or highway may act on that assumption unless he or she, in the exercise of reasonable care, has knowledge or reason to believe otherwise. *McGuire v Rabaut*, 354 Mich 230, 234–37 (1958).

“[T]raffic violations are strict liability offenses, in which the motorist’s negligence or lack of intent to commit the infraction is irrelevant.” Defendant’s inability to stop at a sign due to icy road conditions is irrelevant. *People v Jones*, 132 Mich App 368, 370–71 (1984).

B. Traffic Lights or Signals

When traffic is controlled by traffic control lights or signals, at least one light or signal shall be located over the traveled portion of the roadway to give drivers a clear indication of the right-of-way assignment from their normal

position approaching the intersection. Traffic lights and signals shall exhibit different colored lights successively, one at a time, or with arrows. MCL 257.612(1).

1. Solid Green

“[P]roceed straight through or turn right or left unless a sign at that place prohibits either turn. . . . [Y]ield the right of way to other vehicles and pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.” MCL 257.612(1)(a).

- A driver approaching an intersection equipped with a traffic light has a duty to look for the green light and to see that the intersection is clear before attempting to cross. *Travis v Eisenlord*, 256 Mich 264, 266 (1931).
- The changing of a light from red to green does not authorize a driver to proceed through an intersection without reasonable regard for the circumstances open to his or her view. *Smarinsky v Markowitz*, 265 Mich 412, 414 (1933).

2. Solid Yellow

“[S]top before entering the nearest crosswalk at the intersection or at a limit line when marked, but if the stop cannot be made in safety, a vehicle may be driven cautiously through the intersection.” MCL 257.612(1)(b).

3. Solid Red

MCL 257.612(1)(c)(i) states:

“[S]top before entering the crosswalk on the near side of the intersection or at a limit line when marked or, if there is no crosswalk or limit line, before entering the intersection, and . . . remain standing until a green indication is shown, except as provided in subparagraph (ii).”

Subparagraph (ii) provides the following exceptions:

- Right turn on solid red: After stopping, the driver may make a right turn from any one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn, unless otherwise prohibited, and yielding the right-of-way to other vehicles and pedestrians lawfully using the intersection. MCL 257.612(1)(c)(ii).
- Left turn on solid red: After stopping, the driver may make a left turn from any one-way or two-way street into a one-way street carrying traffic in the direction of the left turn, unless otherwise prohibited, and yielding the right-of-way to other vehicles and

*See Section 2.9(A), above, for rules governing the right-of-way at a stop sign.

pedestrians lawfully using the intersection. MCL 257.612(1)(c)(ii).

4. Flashing Red (Stop Signal)

“[S]top before entering the nearest crosswalk at an intersection or at a limit line when marked and . . . proceed . . . subject to the rules applicable after making a stop at a stop sign.” MCL 257.614(1)(a).*

5. Flashing Yellow (Caution Signal)

“[P]roceed through the intersection or past the signal only with caution.” MCL 257.614(1)(b).

6. Red and Yellow Arrows

“Red arrow and yellow arrow indications have the same meaning as the corresponding circular indications, except that they apply only to drivers of vehicles intending to make the movement indicated by the arrow.” MCL 257.612(1).

C. Stop and Go, Sign and Signal Violations

Stop and go, sign and signal violations include:

- disregarding stop sign, MCL 257.649;
- disregarding flashing red or flashing yellow signal, MCL 257.614;
- disregarding yellow or amber signal, MCL 257.612;
- disregarding stop and go light, MCL 257.612;
- right turn on red light without stopping, MCL 257.612;
- avoiding traffic control device, MCL 257.611; and
- failing to stop leaving private driveway, MCL 257.652.

D. Civil Sanctions for Stop and Go, Sign and Signal Violations

The general rules for assessing a civil fine and costs apply to stop and go, and sign and signal violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

E. Licensing Sanctions for Stop and Go, Sign and Signal Violations

Three points. Disobeying a traffic signal or stop sign is a three-point violation. The finding of responsibility is reported to the Secretary of State. MCL 257.320a(1)(p). Violations of MCL 257.611 (avoiding a traffic control device) are assigned two points.

Two points are assessed for avoiding traffic control devices and failing to stop leaving a private driveway. In assessing points, the Secretary of State has interpreted “[a]ll other moving violations” to include these violations. MCL 257.320a(1)(s).

2.10 Turning and Signaling

Turning at street corners and intersections requires greater caution on the part of the driver than at less congested places on the streets and highways. The driver must use an appropriate signal (hand and arm, or mechanical or electrical device) visible to approaching drivers, both in oncoming vehicles and those approaching from the rear. Both the driver negotiating a turn and the driver of any approaching vehicle should use care commensurate with the obvious conditions regardless of which has the right-of-way when making the turn. *Benson v Tucker*, 252 Mich 385, 187 (1930).

A. Right turn

General rule: “Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway.” MCL 257.647(1)(a).

However, local authorities may place markers, signs, or signals that require and direct a different course for the approach and turn than that specified in this section. MCL 257.647(1)(e).

B. Left turn

General rule: “Approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line in a manner as not to interfere with the progress of any streetcar, and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered.” MCL 257.647(1)(b).

From a two-way to a one-way: “Approach for a left turn . . . shall be made in that portion of the right half of the roadway nearest the center line and clear of existing car tracks in use, and by passing to the right of the center line where it enters the intersection.” MCL 257.647(1)(c).

From a one-way to a two-way: “Approach for a left turn . . . shall be made as close as practicable to the left curb or edge of the roadway and by passing to the right of the center line of the roadway being entered.” MCL 257.647(1)(c).

From a one-way to a one-way: “[B]oth the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway.” MCL 257.647(1)(d).

Local authorities may place markers, signs, or signals that require and direct a different course for the approach and turn than that specified in this section. MCL 257.647(1)(e).

In *Lindsley v Burke*, 189 Mich App 700 (1991), the Court of Appeals held that when one driver signals another to proceed, it is a question of fact whether the signaling driver is merely waiving his or her right-of-way or is indicating that all is clear ahead. This decision overruled *Peka v Boose*, 172 Mich App 139, 143 (1988), which held that a hand motion signified nothing more than permission to cross in front of the signaling driver’s car and could not be relied on as assurance that all was clear ahead.

C. Signal Requirements for Turning

“The driver of a vehicle . . . upon a highway, before stopping or turning from a direct line, shall first see that the stopping or turning can be made in safety and shall give a signal as required in this section.” MCL 257.648(1).

Note: The statute seems to leave room for broad interpretation of the word “turning” by adding “from a direct line.” Although there is no case law construing this statute, a court may interpret this to include a signaling requirement for lane change. It is impossible to change lanes without turning from a direct line.

“A signal required in this section shall be given either by means of the hand and arm . . . or by a mechanical or electrical signal device which conveys an intelligible signal or warning to other highway traffic. . . .” MCL 257.648(2).

The appropriate arm signals include:

- Left turn—hand and arm extended horizontally;
- Right turn—hand and arm extended upward; and
- Stop or decrease speed—hand and arm extended downward.

MCL 257.648(2)(a)–(c).

D. Turning and Signaling Violations

Turning and signaling violations include:

- failing to signal or improper signal, MCL 257.648;
- improper or prohibited right or left turn, MCL 257.647 and MCL 257.648;
- improper turn from wrong lane, MCL 257.647;
- left turn in front of moving traffic, MCL 257.650;
- limited access highway, driving across median, MCL 257.644; and
- prohibited turn on red after stop, MCL 257.612(1)(c)(ii).

E. Civil Sanctions for Turning and Signaling Violations

The general rules for assessing a civil fine and costs apply to turning and signal violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

F. Licensing Sanctions for Turning and Signaling Violations

Two points. The finding of responsibility is reported to the Secretary of State. In assessing points, the Secretary of State has interpreted “[a]ll other moving violations” to include turning and signaling violations. MCL 257.320a(1)(s).

2.11 Wrong Side or Wrong Way

A. “Keep to the Right” Rule

With certain exceptions, a driver has a statutory duty to drive on the right half of the highway; however, the statute must be applied in a reasonable manner considering all related facts and circumstances. MCL 257.634.

A motor vehicle must be driven on the right half of the roadway except as follows:

- When overtaking or passing another vehicle, MCL 257.634(1)(a);
- When the right half is closed due to construction, repair, or obstruction, MCL 257.634(1)(b);
- When a vehicle operated by state or local government, or its agent, is engaged in work on the roadway, MCL 257.634(1)(c);

- On a roadway divided into three marked lanes for traffic, MCL 257.634(1)(d) and MCL 257.642; or
- On a one-way roadway, MCL 257.634(2).

B. Exceptions to the “Keep to the Right” Rule

A defendant may justify driving on the wrong side of the road by showing that the other side was practically impassable or appeared unsafe, the vehicle skidded, or there was a sudden emergency:

- ♦ The other side was practically impassable or appeared unsafe.

A driver may drive on the wrong side of the road, around parked cars, provided he or she exercises reasonable care in doing so. *Rosen v Beh*, 272 Mich 487, 492 (1935).

Because of construction and resurfacing operations, directions were given by a watchman diverting traffic to use the portion of a road normally used by traffic in the opposite direction. *Smith v Whitehead*, 342 Mich 542, 544, 546 (1955).

- ♦ The vehicle skidded.

A driver may be excused from compliance with the statutes requiring him or her to keep to the right side of the highway where he or she is driving at a prudent speed for icy conditions and suddenly hits a patch of ice causing the automobile to skid across the center line. *Young v Flood*, 182 Mich App 538, 544 (1990).

- ♦ There was a sudden emergency.

The sudden emergency doctrine applies where the driver is confronted with a situation that is “unusual” or “unsuspected.” “Unusual” means different from the everyday traffic routine confronting a motorist. “Unsuspected” means appearing so suddenly that the normal expectations of due and ordinary care are modified. *Vander Laan v Miedema*, 385 Mich 226, 231–32 (1980).

Icy patches on Michigan roads can be unsuspected. *Young, supra* at 543.

The defendant suddenly fainted or became unconscious immediately before driving on the wrong side of the road, so that the car moving to the wrong side of the road was not a voluntary act. However, if the driver had reason to believe that he or she would faint or become unconscious, the condition, or feeling, would be closely analogous to a driver continuing to drive while being in a sleepy condition. *Soule v Grimshaw*, 266 Mich 117, 119–20 (1934).

C. One-Way and Two-Way Traffic

“[A] roadway designated and signposted for 1-way traffic shall be driven only in the direction designated.” MCL 257.641(2).

“Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other not less than 1/2 of the main traveled portion of the roadway as nearly as possible.” MCL 257.635(1).

When traveling at night on an unmarked road, it is the duty of the driver to make a reasonable allowance for possible inaccuracy in judgment as to where the median line is located and whether the driver’s vehicle is entirely on the proper side of the road. *Lijewski v Wrzesinski*, 328 Mich 129, 135–36 (1950).

D. Wrong Side or Wrong Way Violations

Wrong side or wrong way violations include:

- driving on the wrong side of divided highway, MCL 257.644;
- driving on wrong side of undivided highway, MCL 257.642;
- driving the wrong way on a one-way road, MCL 257.641;
- entering freeway improperly, MCL 257.645;
- failing to keep to the right, MCL 257.634; and
- failing to keep to the right half of the roadway when passing vehicle going in opposite direction, MCL 257.635.

E. Civil Sanctions for Wrong Side or Wrong Way Violations

The general rules for assessing a civil fine and costs apply to wrong side or wrong way violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

F. Licensing Sanctions for Wrong Side or Wrong Way Violations

Two points. The finding of responsibility is reported to the Secretary of State. In assessing points, the Secretary of State has interpreted “[a]ll other moving violations” to include wrong side or wrong way violations. MCL 257.320a(1)(s).

2.12 Careless Driving

A. Statute

“A person who operates a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public including an area designated for the parking of vehicles in a careless or negligent manner likely to endanger any person or property, but without wantonness or recklessness, is responsible for a civil infraction.” MCL 257.626b.

B. Civil Sanctions for Careless Driving

The general rules for assessing a civil fine and costs apply to careless driving. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Licensing Sanctions for Careless Driving

Three points. The finding of responsibility is reported to the Secretary of State. MCL 257.320a(1)(m).

D. Issues

The difference between reckless driving,* a misdemeanor, and careless driving, a civil infraction, is the degree of negligence. The court should consider the manner of operating the vehicle, not the results. Reckless driving requires gross negligence, which is defined as driving in “willful or wanton disregard for the safety of persons or property.” MCL 257.626(a). Careless driving requires ordinary negligence, which is defined as operating a motor vehicle in a “negligent manner likely to endanger any person or property, but without wantonness or recklessness.” MCL 257.626b.

Note: If the prosecuting attorney, in a plea bargain, decides to reduce the charge from reckless driving to careless driving, it is necessary to dismiss the misdemeanor charge and to have another citation issued for a civil infraction to which the defendant will then plead responsible.

*See Section 3.49 of this volume.

2.13 Permitting Minor to Ride in Pickup Truck Bed

A. Statute

MCL 257.682b(1) states:

“Except as provided in this section, an operator shall not permit a person less than 18 years of age to ride in the open bed of a pickup truck on a highway, road, or street in a city, village, or township at a speed greater than 15 miles per hour.”

B. Exceptions

MCL 257.682b(1) does not apply to the operator of any of the following:

“(a) A motor vehicle operated as part of a parade pursuant to a permit issued by the governmental unit with jurisdiction over the highway or street.

“(b) A military motor vehicle.

“(c) An authorized emergency vehicle.

“(d) A motor vehicle controlled or operated by an employer or an employee of a farm operation, construction business, or similar enterprise during the course of work activities.

“(e) A motor vehicle used to transport a search and rescue team to and from the site of an emergency.” MCL 257.682b(2).

C. Civil Sanctions for Permitting Minor to Ride in Pickup Truck Bed

The general rules for assessing a civil fine and costs apply to permitting a minor to ride in a pickup truck bed. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

D. Licensing Sanctions for Permitting Minor to Ride in Pickup Truck Bed

Two points. The finding of responsibility is reported to the Secretary of State. In assessing points, the Secretary of State has interpreted “[a]ll other moving violations” to include permitting a minor to ride in a pickup truck bed. MCL 257.320a(1)(s).

2.14 Failing to Change Address on Registration or Title

A. Statute

MCL 257.228(1) states:

“If a person, after making application for or obtaining the registration of a vehicle or a certificate of title, moves from the address named in the application as shown upon a registration certificate or certificate of title, the person within 10 days after moving shall notify the secretary of state in writing of the old and new addresses.”

B. Civil Sanctions for Failing to Change Address on Registration or Title

The general rules for assessing a civil fine and costs apply to failure to change address violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Licensing Sanctions for Failing to Change Address on Registration or Title

No points. The finding of responsibility is not reported to the Secretary of State. MCL 257.732(16)(b).

2.15 Failing to Stop for School Bus

A. Statute

MCL 257.682(1) and (3) state:

“(1) The driver of a vehicle overtaking or meeting a school bus which has stopped and is displaying 2 alternately flashing red lights located at the same level shall bring the vehicle to a full stop not less than 20 feet from the school bus and shall not proceed until the school bus resumes motion or the visual signals are no longer actuated. At an intersection where traffic is controlled by an officer or a traffic stop-and-go signal a vehicle need not be brought to a full stop before passing a stopped school bus, but may proceed past the school bus at a speed not greater than is reasonable and proper but not greater than 10 miles an hour and with due caution for the safety of passengers being received or discharged from the school bus. The driver of a vehicle who fails to stop for a school bus as required by this subsection, who passes a school bus in violation of this subsection, or who fails to stop for a school bus in

violation of an ordinance that complies with this subsection, is responsible for a civil infraction.

* * *

“(3) In a proceeding for a violation of subsection (1), proof that the particular vehicle described in the citation was in violation of subsection (1), together with proof that the defendant named in the citation was, at the time of the violation, the registered owner of the vehicle, shall constitute in evidence a presumption that the registered owner of the vehicle was the driver of the vehicle at the time of the violation.”

B. Exception

If the highway “has been divided into 2 roadways by leaving an intervening space, or by a physical barrier, or clearly indicated dividing sections so constructed as to impede vehicular traffic,” and if the driver meets the school bus which has stopped across the dividing space, barrier, or section, he or she is not required to stop. MCL 257.682(2).

C. Civil Sanctions for Failing to Stop for a School Bus

1. Standard Civil Sanctions for Failing to Stop for a School Bus

Except as noted in subsection (2), below, the general rules for assessing a civil fine and costs apply to failing to stop for a school bus violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

2. Special Civil Sanction Provisions for Failing to Stop for a School Bus

The fine assessed shall be at least \$100.00 but not more than \$500.00. The court must order the defendant to pay taxable costs. MCL 257.907(2) and (4). In addition to the civil fine and costs, the defendant may be ordered to perform community service at a school not to exceed 100 hours for failing to stop for a school bus. MCL 257.682(4).

D. Licensing Sanctions

Three points. The finding of responsibility is reported to the Secretary of State. MCL 257.320a(1)(p).

2.16 Following a Fire Truck Too Closely

A. Statute

“The driver of a vehicle other than a vehicle on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or driver [sic] into or park the vehicle within 500 feet where fire apparatus has stopped in answer to a fire alarm.” MCL 257.679(1).

B. Civil Sanctions for Following a Fire Truck Too Closely

The general rules for assessing a civil fine and costs apply to following a fire truck too closely violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Licensing Sanctions for Following a Fire Truck Too Closely

Two points. The finding of responsibility is reported to the Secretary of State. In assessing points, the Secretary of State has interpreted “[a]ll other moving violations” to include following a fire truck too closely. MCL 257.320a(1)(s).

However, the statute says “shall not follow . . . or park.” “Following” is reported to the Secretary of State; “parking” is not. MCL 257.679 and MCL 257.732(16)(a).

2.17 Interference With View, Control, or Operation of Vehicle

A. Statute

MCL 257.677(1)–(2) state:

“(1) A person shall not drive a vehicle when it is loaded, or when there are in the front seat a number of persons, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver’s control over the driving mechanism of the vehicle.

“(2) A passenger in a vehicle or a streetcar shall not ride in a position as to interfere with the driver’s or operator’s view ahead or to the sides, or to interfere with the driver’s or operator’s control over the driving mechanism of the vehicle or streetcar.”

B. Civil Sanctions for Interference With View, Control, or Operation of Vehicle

The general rules for assessing a civil fine and costs apply to interference with view, control, or operation of vehicle violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Licensing Sanctions

Two points. The finding of responsibility is reported to the Secretary of State. In assessing points, the Secretary of State has interpreted “[a]ll other moving violations” to include interference with view, control, or operating of vehicle. MCL 257.320a(1)(s).

2.18 No Proof of Insurance

A. Statute

“The owner of a motor vehicle who operates or permits the operation of the motor vehicle upon the highways of this state or the operator of the motor vehicle shall produce . . . , upon the request of a police officer, evidence that the motor vehicle is insured [A]n owner or operator of a motor vehicle who fails to produce evidence of insurance under this subsection when requested to produce that evidence or who fails to have motor vehicle insurance for the vehicle . . . is responsible for a civil infraction.” MCL 257.328(1).

B. Civil Sanctions for No Proof of Insurance

1. Standard Civil Sanctions for No Proof of Insurance

Except as provided in sub-subsection (2), below, the general rules for assessing a civil fine and costs apply to no proof of insurance violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

2. Special Civil Sanction Provisions for No Proof of Insurance

The fine assessed shall be \$50.00 or less. The court may not order the defendant to pay costs. MCL 257.907(2).

MCL 257.328(3) states:

“(3) If, before the appearance date on the citation, the person submits proof to the court that the motor vehicle had insurance meeting the requirements of . . . the insurance code . . . at the time the violation . . . occurred, all of the following apply:

“(a) The court shall not assess a fine or costs.

“(b) The court shall not cause an abstract of the court record to be forwarded to the secretary of state.

“(c) The court may assess a fee of not more than \$25.00, which shall be paid to the court funding unit.”*

*The court may waive this fee. MCL 257.907(16).

A court may require a defendant to surrender his or her driver’s license. If so, the court shall order the license suspended. MCL 257.328(4) states:

“If an owner or operator of a motor vehicle is determined to be responsible for a violation of subsection (1), the court in which the civil infraction determination is entered may require the person to surrender his or her . . . license unless proof that the vehicle has insurance meeting the requirements of . . . MCL 500.3101 and 500.3102, is submitted to the court. If the court requires the license to be surrendered, the court shall order the secretary of state to suspend the person’s license. The court shall immediately destroy the license and shall forward to the secretary of state an abstract of the court record”

Driver Responsibility Fee. If an abstract is posted that a person has been determined responsible for a violation of MCL 257.328, the Secretary of State shall assess a \$200.00 driver responsibility fee each year for two consecutive years. MCL 257.732a(2)(d).

C. Licensing Sanctions for No Proof of Insurance

No points are entered on a driver’s record for a violation of MCL 257.328. MCL 257.328(7). A finding of responsibility for a violation of MCL 257.328(1) is not reported to the Secretary of State if the defendant complies with MCL 257.328(3) by providing proof to the court that the motor vehicle was insured at the time of the citation. A finding of responsibility is reported to the Secretary of State if the defendant obtained insurance subsequent to the time of the violation. MCL 257.732(16)(f).

If suspension of the driver’s license is ordered by the court, it shall be for a period of 30 days (to begin the date the driver is determined to be responsible for the civil infraction) or until proof of insurance is submitted to the Secretary of State along with a \$25.00 service fee, whichever occurs later. MCL 257.328(4).

D. Issues

There are four different offenses in Michigan dealing with an owner's obligation to have no-fault automobile insurance. Because these offenses are often confused with one another, they are listed here in order of severity:

- ♦ failing to produce evidence of insurance is a civil infraction under MCL 257.328(1).
- ♦ forging proof of insurance is a 90-day misdemeanor under MCL 257.905.
- ♦ producing false evidence of insurance is a one-year misdemeanor under MCL 257.328(6).
- ♦ operating a motor vehicle without insurance is a one-year misdemeanor under MCL 500.3102(2).

2.19 No Proof of Registration

A. Statute

MCL 257.223(1) states:

“Upon receipt of a registration certificate, the owner shall write his or her signature thereon with pen and ink in the space provided. A registration certificate shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of the vehicle, who shall display the registration certificate upon demand of a police officer.”

B. Civil Sanctions for No Proof of Registration

1. Standard Civil Sanctions for No Proof of Registration

Except as noted in sub-subsection (2), below, the general rules for assessing a civil fine and costs apply to no proof of registration violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

2. Special Civil Sanction Provisions for No Proof of Registration

The court shall waive the civil fine and costs on receipt of certification by a law enforcement agency that the defendant, before the appearance date on the citation, has produced a valid registration certificate that was valid on the date the violation occurred. MCL 257.907(15).

C. Licensing Sanctions for No Proof of Registration

No points. The finding of responsibility is not reported to the Secretary of State. MCL 257.732(16)(b).

2.20 Invalid or No Registration Plate

A. Statute

MCL 257.255(1) states:

“[A] person shall not operate, nor shall an owner knowingly permit to be operated, upon any highway, a vehicle required to be registered under this act unless there is attached to and displayed on the vehicle, as required by this chapter, a valid registration plate issued for the vehicle by the department for the current registration year. A registration plate shall not be required upon any wrecked or disabled vehicle, or vehicle destined for repair or junking, which is being transported or drawn upon a highway by a wrecker or a registered motor vehicle.”*

*This statute was amended by 2003 PA 9, effective September 1, 2003. Prior to this amendment, a violation of subsection (1) was a misdemeanor.

B. Civil Sanctions for Invalid or No Registration Plate

The general rules for assessing a civil fine and costs apply to invalid or no registration plate violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Licensing Sanctions for Invalid or No Registration Plate

No points. The finding of responsibility is not reported to the Secretary of State. MCL 257.732(16)(c).

D. Issues

“Merely because the driver of an automobile cannot produce evidence of its registration does not, standing by itself, provide a basis for a reasonable belief that it is stolen. Although the law requires a registration certificate to be carried in Michigan-licensed vehicles . . . , noncompliance by honest citizens occurs with such frequency that it is not reasonable to believe an automobile to be stolen from that alone.” *People v Marshall*, 25 Mich App 376, 379 (1970).

Use of a special registration plate on a vehicle other than the vehicle for which the plate was issued is a misdemeanor. The Secretary of State shall confiscate the plate of any person who is in violation. MCL 257.803c. These special

registration plates include both personalized plates and veterans plates. See MCL 257.802–257.804 for descriptions of these specialized plates.

2.21 Operating a Vehicle in Violation of Graduated Licensing Requirements

In 1996, the legislature passed Public Act 387, which completely redesigned the driver education and licensing system for young and first-time drivers. The statute created a graduated licensing system, shifted most of the responsibility for training drivers to commercial driver training schools, and eliminated the requirements that school districts offer driver education courses.

The statute also decriminalized these provisions by providing that a person who violates these requirements is responsible for a civil infraction. MCL 257.310e(11) and (14).

A. Statute

♦ Level 1 graduated licenses:

MCL 257.310e(3)–(4) state:

“(3) Except as otherwise provided in section 303,* a person who is not less than 14 years and 9 months of age may be issued a level 1 graduated licensing status to operate a motor vehicle if the person has satisfied all of the following conditions:

“(a) Passed a vision test and met health standards as prescribed by the secretary of state.

“(b) Successfully completed segment 1 of a driver education course as that term is defined in section 1 of the driver education and training schools act, 1974 PA 369, MCL 256.601, including a minimum of 6 hours of on-the-road driving time with the instructor.

“(c) Received written approval of a parent or legal guardian.”

“(4) A person issued a level 1 graduated licensing status may operate a motor vehicle only when accompanied either by a licensed parent or legal guardian or, with the permission of the parent or legal guardian, a licensed driver 21 years of age or older. Except as otherwise provided in this section, a person is restricted to operating a motor vehicle with a level 1 graduated licensing status for not less than 6 months.”

*Section 303 provides limitations on issuing a license. For example, the person must be able to read road signs in English.

♦ **Level 2 graduated licenses**

MCL 257.310e(5)–(7) state:

“(5) A person may be issued a level 2 graduated licensing status to operate a motor vehicle if the person has satisfied all of the following conditions:

“(a) Had a level 1 graduated licensing status for not less than 6 months.

“(b) Successfully completed segment 2 of a driver education course as that term is defined in section 1 of the driver education and training schools act, 1974 PA 369, MCL 256.601.

“(c) Not incurred a moving violation resulting in a conviction or civil infraction determination or been involved in an accident for which the official police report indicates a moving violation on the part of the person during the 90-day period immediately preceding application.

“(d) Presented a certification by the parent or guardian that he or she, accompanied by his or her licensed parent or legal guardian or, with permission of the parent or legal guardian, any licensed driver 21 years of age or older, has accumulated a total of not less than 50 hours of behind-the-wheel experience including not less than 10 nighttime hours.

“(e) Successfully completed a secretary of state approved performance road test. The secretary of state may enter into an agreement with another public or private person or agency, including a city, village, or township, to conduct this performance road test. This subdivision applies to a person 16 years of age or over only if the person has satisfied subdivisions (a), (b), (c), and (d).

“(6) A person issued a level 2 graduated licensing status under subsection (5) shall remain at level 2 for not less than 6 months and shall not operate a motor vehicle within this state from 12 midnight to 5 a.m. unless accompanied by a parent or legal guardian or a licensed driver over the age of 21 designated by the parent or legal guardian, or except when going to or from employment.

“(7) The provisions and provisional period described in subsection (4) or (6) shall be expanded or extended, or both, beyond the

periods described in subsection (4) or (6) if any of the following occur and are recorded on the licensee's driving record during the provisional periods described in subsection (4) or (6) or any additional periods imposed under this subsection:

“(a) A moving violation resulting in a conviction, civil infraction determination, or probate court disposition.

“(b) An accident for which the official police report indicates a moving violation on the part of the licensee.

“(c) A license suspension for a reason other than a mental or physical disability.

“(d) A violation of subsection (4) or (6).”

♦ **Operating without a graduated license in possession**

“(14) A person shall have his or her graduated licensing status in his or her immediate possession at all times when operating a motor vehicle, and shall display the card upon demand of a police officer. A person who violates this subsection is responsible for a civil infraction.” MCL 257.310e(14).

B. Civil Sanctions for Operating a Vehicle in Violation of Graduated Licensing Requirements

The general rules for assessing a civil fine and costs apply to graduated licensing violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Licensing Sanctions for Operating a Vehicle in Violation of Graduated Licensing Requirements

Two points for operating in violation of level 1 or 2 graduated licensing requirements. MCL 257.320a(1)(r). No points for operating without a graduated license in possession. MCL 257.320a(2). The finding of responsibility is reported to the Secretary of State.

2.22 Failing to Change Address on Driver's License

A. Statute

“An operator or chauffeur who changes his or her residence before the expiration of a license granted under this chapter shall immediately notify the secretary of state of his or her new residence address. . . .” MCL 257.315(1).

“If a person fails to report a change of his or her residence address as required under this section and subsequently there is no response to a notice mailed to the residence address shown by the record of the secretary of state or if the person has provided the secretary of state a mailing address different from his or her residence address and there is no response to a notice mailed to that mailing address, the secretary of state may immediately suspend or revoke his or her license. A person who fails to report a change of his or her residence address is responsible for a civil infraction.” MCL 257.315(3).

B. Civil Sanctions for Failing to Change Address on Driver’s License

The general rules for assessing a civil fine and costs apply to failing to change address on license violations. See Section 1.20 of this volume for a discussion of the general rules governing the assessment of a civil fine and costs.

C. Licensing Sanctions for Failing to Change Address on Driver’s License

No points. The finding of responsibility is not reported to the Secretary of State. MCL 257.732(16)(b).

D. Issues

Reporting a false address change to the Secretary of State is a misdemeanor. MCL 257.315(4) or (5). See Section 3.24 of this volume for a summary of that offense.

“Under the Michigan Vehicle Code, the defendant has a duty to show a correct address on his [or her] operator’s license. This duty exists even though the time may not have arrived when the license itself needs to be renewed.” *Hamilton v Gordon*, 135 Mich App 289, 294 (1984).

Part II

Misdemeanor Offenses

Chapter 3: Misdemeanor Traffic Offenses

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Part A—Introduction

3.1 Scope Note

The principal source of Michigan traffic law is the Motor Vehicle Code. The Motor Vehicle Code clearly distinguishes the misdemeanor traffic offense from the felony and civil infraction. “It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of the state declared to be a felony or a civil infraction.” In other words, if the statute fails to declare the type of offense, it is deemed to be a misdemeanor. MCL 257.901(1).

The Code of Criminal Procedure defines misdemeanor as “a violation of a penal law of this state that is not a felony, or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.” MCL 761.1(h).

This chapter includes many of the misdemeanor traffic offenses in the Motor Vehicle Code that occur most frequently. For ease of reference, these offenses have been grouped into the following categories:

- Failing to Report or Leaving the Scene of Accidents — Part B.
- License and Permit Violations — Part C.
- Title, Plate, Registration, and Insurance Violations — Part D.
- Other Misdemeanors in the Motor Vehicle Code — Part E.

This chapter *does not* include:

- Civil infractions in the Motor Vehicle Code. For a discussion of civil infractions, see Chapters 1 and 2 of this volume of the *Traffic Benchbook*.
- Misdemeanors and civil infractions regulating the operation of off-road vehicles, snowmobiles, marine vessels, and personal watercrafts. For a discussion of these offenses, see Chapters 4–6 of Volume 2 of the *Traffic Benchbook*.
- Offenses involving drunk driving under MCL 257.625 and driving with a suspended/revoked license under MCL 257.904. All of these offenses (both felony and misdemeanor) are discussed in Chapters 1–5 of Volume 3 of the *Traffic Benchbook*.
- Traffic-related misdemeanor offenses found in other Michigan statutes, such as the Insurance Code, the Liquor Control Code, the Motor Carrier Safety Act, the Motor Carrier Act, or the Penal Code. These offenses are not included in any chapters of the *Traffic Benchbook*.

For easy reference, the discussion of each misdemeanor offense in this chapter includes:

- The name;
- The actual statute, or significant parts thereof;
- The elements of the crime;
- Criminal penalties;
- Secretary of State licensing sanctions; and,

- Issues of importance regarding that offense.

3.2 Courts With Jurisdiction Over Misdemeanor Traffic Offenses

The following courts have jurisdiction over misdemeanor traffic offenses:

- The district court has jurisdiction over misdemeanor offenses punishable by fine or imprisonment not exceeding one year, or both; and over ordinance and charter violations punishable by a fine or imprisonment, or both. MCL 600.8311(a)–(b).
- Any municipal court has jurisdiction over ordinance violations for all crimes, misdemeanors, and offenses committed within the limits of the city in which the court is located, punishable by a fine or imprisonment for not more than one year. MCL 730.551.
- The family division of circuit court has jurisdiction over all misdemeanor offenses committed by juveniles under age 17. MCL 712A.2(a)(1). See Miller, *Juvenile Traffic Benchbook—Revised Edition* (MJI, 2005), for a detailed treatment of the proceedings governing juvenile traffic actions.

3.3 Jurisdiction and Duties of District Court Magistrates

District court magistrates, when authorized by the chief judge, have the jurisdiction and duty to arraign and sentence upon pleas of guilty or nolo contendere for misdemeanor violations of the Motor Vehicle Code when the maximum penalty does not exceed 93 days. MCL 600.8511(b). This jurisdiction, however, does not include authority to take pleas and sentence defendants convicted of a violation of MCL 257.625, MCL 257.625m, or a substantially corresponding local ordinance. For these drunk driving offenses, the magistrate has limited jurisdiction to arraign the defendant and set bond. MCL 600.8511(b).

3.4 Processing of Misdemeanor Traffic Offenses

Adjudication of misdemeanor violations follows rules of criminal procedure, which in turn are controlled by the fundamental due process rights provided by the U.S. and Michigan Constitutions. Procedural safeguards include the right to a jury trial, the right to counsel, proof beyond a reasonable doubt, and adherence to the rules of evidence. The question to be resolved by the court is whether the prosecution has proven guilt beyond a reasonable doubt. See, generally, MCR 6.610 and 6.615, and Hummel, *Criminal Procedure Monograph 3: Misdemeanor Arraignments and Pleas—Revised Edition* (MJI, 2004).

The defendant driver who is charged with a misdemeanor pleads “guilty,” “not guilty,” or “nolo contendere.” A conviction is reported on the defendant’s criminal record. It is also reported to the Secretary of State and appears on the defendant’s “master driving record.”

3.5 Criminal Penalties for Misdemeanor Traffic Offenses

Under the Motor Vehicle Code, “[u]nless another penalty is provided in this act or by the laws of this state, a person convicted of a misdemeanor for the violation of this act shall be punished by a fine of not more than \$100.00, or by imprisonment for not more than 90 days, or both.” MCL 257.901(2).

A moving violation committed in a work zone, at an emergency scene, or in a school zone may result in “a fine that is double the fines otherwise prescribed for that moving violation.” MCL 257.601b(1).*

MCL 257.204b(1)-(2) provides that attempted violations of the Motor Vehicle Code shall be treated as completed offenses for purposes of imposing licensing sanctions and criminal penalties:

“(1) When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.

“(2) The court shall impose a criminal penalty for a conviction of an attempted violation of this act or a local ordinance substantially corresponding to a provision of this act in the same manner as if the offense had been completed.”

For more information about attempted offenses under this provision, see Volume 3 of the *Traffic Benchbook*, Section 7.1.

3.6 Minimum State Costs for Misdemeanor Traffic Offenses

Effective October 1, 2003, a schedule of minimum state costs was established* for all misdemeanor convictions, including traffic convictions. MCL 600.8381(4) states:

“Beginning October 1, 2003, when fines and costs are assessed by a judge or district court magistrate, the defendant shall be ordered to pay costs of not less than \$45.00 for each conviction for a serious misdemeanor or a specified misdemeanor or costs of not

*See Section 1.20(A)(1) of this volume for further discussion.

*See 2003 PA 96.

less than \$40.00 for each conviction for any other misdemeanor or ordinance violation.”

Payment of the minimum state cost must be a condition of probation. MCL 771.3(1)(g).

*See Section 3.15, below.

“**Serious misdemeanors**” are listed in MCL 780.811(1)(a)(ix). The only “serious misdemeanor” discussed in this chapter is leaving the scene of a personal-injury accident, MCL 257.617a.* The definition of “serious misdemeanor” includes a violation of a local ordinance substantially corresponding to a “serious misdemeanor” and a charged felony or “serious misdemeanor” subsequently reduced or pled to as a misdemeanor. MCL 780.811(1)(a)(xiv) and (xv).

*See Section 3.49, below.

“**Specified misdemeanors**” are misdemeanor violations of statutory provisions listed in MCL 780.901(h). The only “specified misdemeanor” discussed in this chapter is reckless driving, MCL 257.626.* The definition of “specified misdemeanor” includes a violation of a local ordinance substantially corresponding to the violation listed above. MCL 780.901(h)(x).

3.7 Abstracts of Convictions

*Beginning October 1, 2005, abstracts must be forwarded within five days.

Within 14 days* after conviction, forfeiture of bail, or entry of a default judgment, the court shall prepare and immediately forward to the Secretary of State an abstract of the court record. MCL 257.732(1)(a). The abstract shall be certified by signature, stamp, or facsimile signature to be true and correct. MCL 257.732(3).

MCL 257.732(2) states:

“If a city or village department, bureau, or person is authorized to accept a payment of money as a settlement for a violation of a local ordinance substantially corresponding to this act, the city or village department, bureau, or person shall send a full report of each case in which a person pays any amount of money to the city or village department, bureau, or person to the secretary of state upon a form prescribed by the secretary of state.”

Under MCL 257.732(16)(b)–(d), abstracts of convictions are not required for:

*MCL 257.201 et seq. governs administration, registration, and certificate of title.

- Violations of Chapter 2* of the Motor Vehicle Code that are not the basis for the Secretary of State’s suspension, revocation, or denial of a person’s operator’s or chauffeur’s license; or
- Non-moving violations that are not the basis for the Secretary of State’s suspension, revocation, or denial of a person’s operator’s or chauffeur’s license.
- Passenger violations, other than a violation of MCL 436.1703(1) or (2) (minor in possession), MCL 257.624a or 257.624b

(transporting or possessing open alcohol), or a local ordinance substantially corresponding to one of these violations.

MCL 257.732(3)(a)–(i) requires that the abstract be contained in a form provided by the Secretary of State and include all of the following:

“(a) The name, address, and date of birth of the person charged or cited.

“(b) The number of the person’s operator’s or chauffeur’s license, if any.

“(c) The date and nature of the violation.

“(d) The type of vehicle driven at the time of the violation and, if the vehicle is a commercial motor vehicle, that vehicle’s group designation and indorsement classification.

“(e) The date of the conviction, finding, forfeiture, judgment, or civil infraction determination.

“(f) Whether bail was forfeited.

“(g) Any license restriction, suspension, or denial ordered by the court as provided by law.

“(h) The vehicle identification number and registration plate number of all vehicles that are ordered immobilized or forfeited.

“(i) Other information considered necessary to the secretary of state.”

3.8 Points

The misdemeanor conviction is entered on defendant’s “master driving record”; points may also be assessed according to the schedule prescribed by statute. Assessing points is a mandatory function of the Secretary of State; it is not a function of the court. MCL 257.320a(1) lists the points that shall be entered by the Secretary of State for the different types of offenses. Each section in this chapter provides the number of points assessed for each misdemeanor.

MCL 257.320a(5) states:

“If more than 1 conviction . . . results from the same incident, points shall be entered only for the violation that receives the highest number of points under this section.”

3.9 Driver's Responsibility Fees

The Secretary of State must impose a driver's responsibility fee upon individuals who have accumulated points under MCL 257.320a. MCL 257.732a(1) provides:

"An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record pursuant to sections 320a . . . within a 2-year period for any violation not listed under subsection (2) shall be assessed a \$100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under subsection (2), an additional fee of \$50.00 shall be assessed. The secretary of state shall collect the fees described in this subsection once each year that the point total on an individual driving record is 7 points or more."

MCL 257.732a(2) specifies higher driver's responsibility fees for certain offenses. Those fees are discussed in this chapter in conjunction with the offenses to which they apply. MCL 257.732a states:

"(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction . . . for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state."

Only points assigned after the original effective date of the statute (October 1, 2003) will be used to calculate the driver responsibility fee. Points existing on a driver's record prior to that date do not count. MCL 257.732a(6).

Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

3.10 License Suspensions and Revocations

The Motor Vehicle Code provides that the Secretary of State shall immediately suspend a person's license upon receiving a record of a person's conviction for certain enumerated offenses. MCL 257.319 lists the lengths of those suspensions. License suspension is discussed in this chapter in conjunction with the offenses to which it applies.

If the Secretary of State receives records of more than one conviction of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies under this section. MCL 257.319(13).

The Motor Vehicle Code also provides for license revocation upon conviction of certain offenses or conviction of multiple offenses within specified time

periods. See MCL 257.303. License revocation is discussed in this chapter in conjunction with the offenses to which it applies.

The Secretary of State may suspend or revoke the license of a resident of this state upon receiving notice of the conviction or determination of responsibility of that person in an administrative adjudication in another state for a violation in that state which, if committed in this state, would be grounds for the suspension or revocation of the license. MCL 257.318.

The Secretary of State may suspend or revoke the right of a nonresident to operate a motor vehicle in this state for the same reasons the license of a resident driver may be suspended or revoked. MCL 257.317.

Part B—Failing to Report or Leaving the Scene of Accidents

3.11 Failing to Give Information and Aid at the Scene of an Accident

A. Statute

MCL 257.619* states:

“The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident with an individual or with another vehicle that is operated or attended by another individual shall do all of the following:

“(a) Give his or her name and address, and the registration number of the vehicle he or she is operating, including the name and address of the owner, to a police officer, the individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(b) Exhibit his or her operator’s or chauffeur’s license to a police officer, individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(c) Render to any individual injured in the accident reasonable assistance in securing medical aid or arrange for or provide transportation to any injured individual.”

B. Elements of the Offense

- 1) Defendant driver knew or had reason to believe that he or she was involved in an accident with an individual or with another vehicle occupied or attended by another individual; and

*Amended by
2005 PA 3,
effective April
1, 2005.

- 2) Defendant driver failed to provide or exhibit to a police officer, the individual struck, or the driver or occupants of the vehicle with which the defendant driver collided the following information required by the statute:
 - a) Defendant driver's name and address, the registration number of his or her vehicle, including the name and address of the vehicle's owner, and
 - b) Defendant driver's operator's or chauffeur's license; or
- 3) Defendant driver failed to provide reasonable assistance to secure medical aid or transportation for an injured individual.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Under MCL 257.320a(1)(d), six points are assessed on the driver's record when a driver is convicted of "[f]ailing to stop and disclose identity at the scene of an accident when required by law." However, the Secretary of State considers a violation of MCL 257.619 a non-moving violation and, therefore, does not assess any points for its violation. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

*MCL 257.617 prohibits leaving the scene of an accident resulting in serious impairment of a body function or death. See Volume 3, Section 7.9 for a discussion of that statute.

The legislative intent behind MCL 257.617* and MCL 257.619 was to reduce hit-and-run accidents and encourage drivers involved in accidents to assume responsibility for identifying themselves and offering assistance, thus promoting public safety. *People v Sartor*, 235 Mich App 614, 620 (1999).

Where the term "accident" appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Lang*, 250 Mich App 565, 573 (2002), the Court of Appeals held that MCL 257.617 requires the prosecutor to prove that the driver (1) knew or had reason to believe that he or she was involved in an accident and (2) knew or had reason to believe that the accident resulted in serious or aggravated injury to or the death of a person. In response to the *Lang* decision, the

Legislature amended MCL 257.617, 257.617a, 257.618, and 257.619, deleting the requirement that a driver know or have reason to believe that an accident resulted in physical injury, death, or property damage. 2005 PA 3.

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals indicated that to be “involved in” an accident the defendant must have been “‘implicated,’ and ‘concerned in some affair, esp. in a way likely to cause danger or unpleasantness.’” In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander’s car slowed down the defendant would “bump” it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle’s driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not “involved in” the accident because his vehicle was not in contact with Alexander’s car when it swerved into oncoming traffic. The Court rejected the argument that “a vehicle cannot be ‘involved in’ an accident if it does not strike or physically touch another automobile.” *Id.* at 96.

In *People v Keskimaki*, 446 Mich 240 (1994), the Michigan Supreme Court provided that the determination of whether or not an accident has occurred depends on an examination of all of the circumstances surrounding the incident. Although the court declined to give a general definition of “accident” applicable to all criminal statutes, the Court indicated that consideration should be given to whether there has been a collision, whether personal injury or property damage has resulted from the occurrence, and whether the incident either was undesirable for or unexpected by any of the parties directly involved. *Id.* at 248-249.

MCL 257.617 does not limit accidents to multi-vehicle accidents. The driver of a vehicle involved in a single-vehicle accident must comply with the requirements of MCL 257.619. *People v Noble*, 238 Mich App 647, 659 (1999).

A person, other than the driver, in the motor vehicle at the time of the accident may be properly charged with aiding and abetting in the commission of leaving the scene of an accident without rendering necessary assistance to an injured person. If the person is found guilty, he or she is subject to the same punishment as the principal. *People v Hoaglin*, 262 Mich 162, 172 (1933).

A defendant’s Fifth Amendment right against self-incrimination is not implicated by requiring the defendant to comply with a statutory mandate to stop and disclose neutral information at the scene of a serious accident. *People v Goodin*, 257 Mich App 425, 431 (2003). MCL 257.617 requires a driver who was involved in an accident resulting in serious injury to stop at the scene of the accident and fulfill the disclosure requirements of MCL 257.619. In *Goodin*, the defendant argued that he would have been forced to incriminate himself by admitting he was involved in the collision if he had complied with

the statutory scheme of stopping at the scene and disclosing information. *Goodin, supra* at 428.

The Court disagreed with the defendant and held that the disclosures required of drivers involved in serious accidents are neutral, have no criminal implications, and do not create a significant risk of self-incrimination. *Goodin, supra* at 431.

The requirement in MCL 257.619 that a person render “reasonable assistance” is not unconstitutionally vague. *People v Noble*, 238 Mich App 647, 653 (1999).

3.12 Failing to Report Accident Involving Death, Personal Injury, or Property Damage of \$1,000 or More

A. Statute

In part, MCL 257.622 states:

“The driver of a motor vehicle involved in an accident that injures or kills any person, or that damages property to an apparent extent totaling \$1,000.00 or more,* shall immediately report that accident at the nearest or most convenient police station, or to the nearest or most convenient police officer.”

B. Elements of the Offense

- 1) Defendant driver was involved in an accident resulting in personal injury or death; or
- 2) Defendant was involved in an accident resulting in property damage to an apparent extent of \$1,000.00 or more (not actual damage amount); and
- 3) Defendant failed to immediately report the accident to the police.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

*Effective January 1, 2004, 2003 PA 66 increased the minimum dollar amount of property damage required by MCL 257.622 from \$400.00 to \$1,000.00.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals held that to be “involved in” an accident the defendant must have been “‘implicated,’ and ‘concerned in some affair, esp. in a way likely to cause danger or unpleasantness.’” In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander’s car slowed down the defendant would “bump” it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle’s driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not “involved in” the accident because his vehicle was not in contact with Alexander’s car when it swerved into oncoming traffic. The Court rejected the argument that “a vehicle cannot be ‘involved in’ an accident if it does not strike or physically touch another automobile.” *Id.* at 96.

In *People v Keskimaki*, 446 Mich 240 (1994), the Michigan Supreme Court provided that the determination of whether or not an accident has occurred depends on an examination of all of the circumstances surrounding the incident. Although the court declined to give a general definition of “accident” applicable to all criminal statutes, the Court indicated that consideration should be given to whether there has been a collision, whether personal injury or property damage has resulted from the occurrence, and whether the incident either was undesirable for or unexpected by any of the parties directly involved. *Id.* at 248-249.

In a prosecution under MCL 257.622, the prosecuting attorney must introduce some evidence of the *actual* value of the property damage resulting from an accident, and the prosecuting attorney must prove that the extent of the damage was apparent. *People v Schmidt*, 196 Mich App 104, 107–108 (1992).

3.13 Garage or Repair Shop Failing to Report Evidence of Accident or Bullet

A. Statute

MCL 257.623 states:

“The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or having been struck by any bullet shall report the same to the nearest police station or sheriff’s office immediately after such motor vehicle is received, giving the engine number, registration number and the name and address of the owner, and/or operator of such vehicle.”

B. Elements of the Offense

- 1) Defendant was in charge of a garage or repair shop;
- 2) A motor vehicle was brought that showed evidence of involvement in an accident or having been hit by a bullet; and
- 3) Defendant failed to immediately report evidence of an accident or bullet to the police, including engine number, registration number, and name and address of vehicle owner or operator.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.14 Leaving the Scene of an Accident Resulting in Damage to Fixtures That Are Upon or Adjacent to a Highway

A. Statute

MCL 257.621(a) states:

“The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such accident and of his [or her] name and address and of the registration number of the vehicle he [or she] is driving and shall upon request exhibit his [or her] operator’s or chauffeur’s license and, if such owner cannot be found, shall forthwith report such accident to the nearest or most convenient police officer.”

B. Elements of the Offense

- 1) Defendant driver was involved in an accident resulting only in damage to fixtures;
- 2) The fixtures were located legally on or adjacent to a highway; and
- 3) Defendant failed to take reasonable steps to locate and give notice to the owner or person in charge of the fixtures, or
- 4) Defendant could not find the owner or person in charge of the fixtures and failed to report the accident to a police officer.

The following information must be given:

- The driver’s name and address.
- The vehicle registration number.
- The defendant’s driver’s license, if requested.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

The lack of points for this offense may appear inconsistent with similar misdemeanor offenses that require assessment of six points. See, for example, leaving the scene of an accident with an attended or unattended vehicle under MCL 257.620, which is discussed at Section 3.17, below.

*See MCL
257.320a(1)(d).

A 1977 attorney general opinion explains this disparity by pointing out that the Secretary of State assesses six points on a driver's record when he or she fails to "stop and disclose [his or her] identity at the scene of an accident when required by law."* The attorney general opinion concludes:

"[MCL 257.621] requires a driver to 'take reasonable steps to locate and notify the owner' of property damaged in the accident. Unlike [§620], this section includes no requirement that these steps be taken 'immediately' or 'then and there'. Such 'reasonable steps' . . . may very well involve leaving the scene of an accident as soon as possible where it is obvious that there is no one in the vicinity who could be the 'owner or person in charge' of the damaged property, and to whom notice could be given. Therefore . . . the Secretary of State should not assess 6 points against a driver convicted of violating §621." OAG, 1977, No 5137, pp 2–3 (March 22, 1977).

E. Issues

Where the term "accident" appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals held that to be "involved in" an accident the defendant must have been "implicated," and "concerned in some affair, esp. in a way likely to cause danger or unpleasantness." In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander's car slowed down the defendant would "bump" it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle's driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not "involved in" the accident because his vehicle was not in contact with Alexander's car when it swerved into oncoming traffic. The Court rejected the argument that "a vehicle cannot be 'involved in' an accident if it does not strike or physically touch another automobile." *Id.* at 96.

In *People v Keskimaki*, 446 Mich 240 (1994), the Michigan Supreme Court provided that the determination of whether or not an accident has occurred depends on an examination of all of the circumstances surrounding the incident. Although the court declined to give a general definition of “accident” applicable to all criminal statutes, the Court indicated that consideration should be given to whether there has been a collision, whether personal injury or property damage has resulted from the occurrence, and whether the incident either was undesirable for or unexpected by any of the parties directly involved. *Id.* at 248-249.

3.15 Leaving the Scene of an Accident Resulting in Personal Injury

A. Statutes

MCL 257.617a* states in part:

“(1) The driver of a vehicle who knows or who has reason to believe that he [or she] has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of section 619 are fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of section 619(a) and (b) if there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing traffic more than is necessary.”

*Amended by
2005 PA 3,
effective April
1, 2005.

MCL 257.619* states:

“The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident with an individual or with another vehicle that is operated or attended by another individual shall do all of the following:

*Amended by
2005 PA 3,
effective April
1, 2005.

“(a) Give his or her name and address, and the registration number of the vehicle he or she is operating, including the name and address of the owner, to a police officer, the individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(b) Exhibit his or her operator’s or chauffeur’s license to a police officer, individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(c) Render to any individual injured in the accident reasonable assistance in securing medical aid or arrange for or provide transportation to any injured individual.”

B. Elements of the Offense

- 1) Defendant driver knew or had reason to believe that he or she was involved in an accident; and
- 2) The accident occurred on property open to public travel; and
- 3) The accident resulted in injury to any individual; and
- 4) Defendant driver failed to stop and remain at the scene of the accident long enough to fulfill the requirements of MCL 257.619; or
- 5) There existed a reasonable and honest belief that remaining at the scene would result in further harm, defendant driver failed to stop at the scene, and defendant driver failed to immediately report the accident to the nearest or most convenient police officer or agency to fulfill the requirements of MCL 257.619(a) and (b).

C. Criminal Penalties

MCL 257.617a(2) provides for:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

D. Licensing Sanctions

Six points. MCL 257.320a(1)(d). The Secretary of State shall suspend the defendant's license for 90 days. MCL 257.319(3)(a). A conviction is reported to the Secretary of State.

The Secretary of State is required to impose a \$1,000.00 driver responsibility fee for failing to stop and disclose identity at the scene of an accident when required by law. MCL 257.732a(2)(a)(iv).^{*} The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

^{*}The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

E. Issues

The legislative intent behind MCL 257.617* and MCL 257.619 was to reduce hit-and-run accidents and encourage drivers involved in accidents to assume responsibility for identifying themselves and offering assistance, thus promoting public safety. *People v Sartor*, 235 Mich App 614, 620 (1999).

The requirement in MCL 257.619 that a person render “reasonable assistance” is not unconstitutionally vague. *People v Noble*, 238 Mich App 647, 653 (1999).

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Lang*, 250 Mich App 565, 573 (2002), the Court of Appeals held that MCL 257.617 requires the prosecutor to prove that the driver (1) knew or had reason to believe that he or she was involved in an accident and (2) knew or had reason to believe that the accident resulted in serious or aggravated injury to or the death of a person. In response to the *Lang* decision, the Legislature amended MCL 257.617, 257.617a, 257.618, and 257.619, deleting the requirement that a driver know or have reason to believe that an accident resulted in physical injury, death, or property damage. 2005 PA 3.

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals held that to be “involved in” an accident the defendant must have been “‘implicated,’ and ‘concerned in some affair, esp. in a way likely to cause danger or unpleasantness.’” In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander’s car slowed down the defendant would “bump” it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle’s driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not “involved in” the accident because his vehicle was not in contact with Alexander’s car when it swerved into oncoming traffic. The Court rejected the argument that “a vehicle cannot be ‘involved in’ an accident if it does not strike or physically touch another automobile.” *Id.* at 96.

In *People v Keskimaki*, 446 Mich 240 (1994), the Michigan Supreme Court provided that the determination of whether or not an accident has occurred depends on an examination of all of the circumstances surrounding the incident. Although the court declined to give a general definition of “accident” applicable to all criminal statutes, the Court indicated that consideration should be given to whether there has been a collision, whether personal injury or property damage has resulted from the occurrence, and

*MCL 257.617 prohibits leaving the scene of an accident resulting in serious impairment of a body function or death. See Volume 3, Section 7.9 for a discussion of that statute.

whether the incident either was undesirable for or unexpected by any of the parties directly involved. *Id.* at 248-249.

An intent to injure is not a necessary element of failing to stop and identify at the scene of a personal injury accident. *People v Strickland*, 79 Mich App 454, 456 (1977).

A person, other than the driver, in the motor vehicle at the time of the accident may be properly charged with aiding and abetting in the commission of leaving the scene of an accident without rendering necessary assistance to an injured person. And if the person is found guilty, he or she is subject to the same punishment as the principal. *People v Hoaglin*, 262 Mich 162, 169 (1933).

Double jeopardy was not violated by defendant's conviction of both assault with a deadly weapon and leaving the scene of a personal injury accident for using his car to pin the victim between his car and another car before driving away. The two constituted different crimes; they were not submitted to the jury as alternatives or relied on by defense counsel as such. *People v Martinson, supra*, 161 Mich App at 58.

Double jeopardy was not violated when defendant was charged with both felonious driving and leaving the scene of an accident resulting in personal injury, when defendant was speeding while pursuing another motor vehicle and struck an oncoming motorcycle. A non-negotiated plea of guilty on the one charge did not prevent trying the other. *People v Goans*, 59 Mich App 294, 295-296 (1975).

A defendant's Fifth Amendment right against self-incrimination is not implicated by requiring the defendant to comply with a statutory mandate to stop and disclose neutral information at the scene of a serious accident. *People v Goodin*, 257 Mich App 425, 431 (2003). The Court held that the disclosures required of drivers involved in serious accidents are neutral, have no criminal implications, and do not create a significant risk of self-incrimination. *Goodin, supra* at 431.

3.16 Leaving the Scene of an Accident Resulting in Vehicle Damage Only

A. Statutes

MCL 257.618* states:

“(1) The driver of a vehicle who knows or who has reason to believe that he [or she] has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of section 619 are

*Amended by 2005 PA 3, effective April 1, 2005.

fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of section 619(a) and (b) if there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing traffic more than is necessary.

“(2) If an individual violates the requirements of subsection (1) and the accident results in damage to a vehicle operated by or attended by any individual, the individual is guilty of a misdemeanor”

MCL 257.619* states:

“The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident with an individual or with another vehicle that is operated or attended by another individual shall do all of the following:

“(a) Give his or her name and address, and the registration number of the vehicle he or she is operating, including the name and address of the owner, to a police officer, the individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(b) Exhibit his or her operator’s or chauffeur’s license to a police officer, individual struck, or the driver or occupants of the vehicle with which he or she has collided.

“(c) Render to any individual injured in the accident reasonable assistance in securing medical aid or arrange for or provide transportation to any injured individual.”

B. Elements of the Offense

- 1) Defendant driver knew or had reason to believe that he or she was involved in an accident; and
- 2) The accident occurred on property open to public travel; and
- 3) The accident resulted in damage to a vehicle operated or attended by any individual; and
- 4) Defendant driver failed to stop and remain at the scene of the accident long enough to fulfill the requirements of MCL 257.619; or
- 5) There existed a reasonable and honest belief that remaining at the scene would result in further harm, defendant driver did not stop at the scene, and defendant driver failed to immediately report the accident to the nearest or most convenient police officer or agency to fulfill the requirements of MCL 257.619(a) and (b).

*Amended by
2005 PA 3,
effective April
1, 2005.

B. Criminal Penalties

MCL 257.618(2) provides for the following penalties:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

C. Licensing Sanctions

Six points. MCL 257.320a(1)(d). A conviction is reported to the Secretary of State.

The Secretary of State is required to impose a \$1,000.00 driver responsibility fee for failing to stop and disclose identity at the scene of an accident when required by law. MCL 257.732a(2)(a)(iv).^{*} The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

D. Issues

Although MCL 257.618 requires the defendant to comply with the requirements of MCL 257.619, the giving of aid to injured persons is obviously not necessary when the accident results in vehicle damage only. If the defendant did stop, but failed to give information, he or she would be guilty of failing to give information and aid at the scene of an accident under MCL 257.619. No points would be assessed. See Section 3.11, above.

Where the term “accident” appears in criminal statutes that forbid leaving the scene of an accident, it includes accidents that were caused by intentional and unintentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

In *People v Lang*, 250 Mich App 565, 573 (2002), the Court of Appeals held that MCL 257.617 requires the prosecutor to prove that the driver (1) knew or had reason to believe that he or she was involved in an accident and (2) knew or had reason to believe that the accident resulted in serious or aggravated injury to or the death of a person. In response to the *Lang* decision, the Legislature amended MCL 257.617, 257.617a, 257.618, and 257.619, deleting the requirement that a driver know or have reason to believe that an accident resulted in physical injury, death, or property damage. 2005 PA 3.

In *People v Oliver*, 242 Mich App 92, 96–97 (2000), the Court of Appeals held that to be “involved in” an accident the defendant must have been “‘implicated,’ and ‘concerned in some affair, esp. in a way likely to cause danger or unpleasantness.’” In *Oliver*, the defendant used his car to push a broken car driven by his friend Alexander. Each time Alexander’s car slowed

^{*}The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

down the defendant would “bump” it to increase its speed. After one of the bumps, Alexander lost control of the vehicle, swerved into oncoming traffic, and was struck by an oncoming vehicle. The oncoming vehicle’s driver was killed. The defendant pulled his car over, looked back at the accident and then drove away. The defendant was convicted of failure to stop at a serious injury accident, MCL 257.617. On appeal, the defendant argued that he was not “involved in” the accident because his vehicle was not in contact with Alexander’s car when it swerved into oncoming traffic. The Court rejected the argument that “a vehicle cannot be ‘involved in’ an accident if it does not strike or physically touch another automobile.” *Id.* at 96.

3.17 Leaving the Scene of an Accident With an Attended or Unattended Vehicle

A. Statute

MCL 257.620 states:

“The driver of any vehicle which collides upon either public or private property with any vehicle which is attended or unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the vehicle or, if such owner [of the other vehicle] cannot be located, shall forthwith report it to the nearest or most convenient police officer.”

B. Elements of the Offense

- 1) Defendant driver struck another vehicle, attended or unattended;
- 2) The accident occurred on either public or private property; and
- 3) Defendant failed to immediately stop and locate the driver or owner of the other vehicle and give defendant’s name and address and the name and address of the owner of the vehicle defendant was driving, or
- 4) Defendant did stop, but could not locate the owner of the other vehicle, and failed to report the accident to the nearest or most convenient police officer.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or

- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Six points. MCL 257.320a(1)(d). A conviction is reported to the Secretary of State.

The assessment of six points for this offense may appear inconsistent with similar misdemeanor offenses that do not require assessment of any points. See, for example, leaving the scene of an accident resulting in damage to fixtures upon a highway, discussed at Section 3.14, above.

*See MCL 257.320a(1)(d).

A 1977 attorney general opinion explains this disparity by pointing out that the Secretary of State assesses six points on a driver's record when he or she fails to "stop and disclose [his or her] identity at the scene of an accident when required by law."* The attorney general opinion concludes:

"[Under MCL 257.620,] a driver involved in a collision with an attended or unattended vehicle must [immediately] stop and identify himself or herself. Only if he [or she] is unable to locate the operator or owner of the vehicle is he [or she] permitted to pursue the alternative of reporting the accident to a police officer. Therefore, if a driver is convicted of violating this section, he [or she] is convicted of failing to identify himself [or herself] at the scene of an accident." OAG, 1977, No 5137, pp 2–3, (March 22, 1977).

*The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

The Secretary of State is required to impose a \$1,000.00 driver responsibility fee for failing to stop and disclose identity at the scene of an accident when required by law. MCL 257.732a(2)(a)(iv).* The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

Part C — License and Permit Violations

3.18 Allowing Another to Operate in Violation of the Motor Vehicle Code

A. Statute

MCL 257.326 states:

“No person shall knowingly authorize or permit a motor vehicle owned by him [or her] or under his [or her] control to be driven by any person in violation of any of the provisions of this act.”

B. Elements of the Offense

- 1) Defendant’s motor vehicle was driven by another in violation of the Motor Vehicle Code; and
- 2) Defendant knowingly authorized or permitted another to drive in violation of the Motor Vehicle Code.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.19 Causing or Permitting an Unlicensed Minor to Drive

A. Statute

MCL 257.325 states:

“It shall be unlawful for any person to cause or knowingly permit any minor to drive a motor vehicle upon a highway as an operator,

unless the minor has first obtained a license to drive a motor vehicle under the provisions of this chapter.”

B. Elements of the Offense

- 1) A minor drove a motor vehicle on a highway;
- 2) At that time, the minor was not licensed to drive; and
- 3) Defendant caused or knowingly permitted the unlicensed minor to drive.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.20 Driving in Violation of a Restricted License

A. Statute

MCL 257.312(1) states:

“Upon proper showing of extenuating circumstances and special reasons, or need by an applicant who meets the age qualifications and when accompanied by the fee as provided in this act, the secretary of state may recommend a restricted operator’s or chauffeur’s license containing conditions and restrictions applicable to the licensee, the type of special mechanical control devices required in a motor vehicle operated by the licensee, and the area, time, or other condition that the secretary of state considers necessary to assure the safe operation of a vehicle by the licensee and under which the licensee may operate a motor vehicle. A license issued to a person who is at least 14 years of age and under 16 years of age shall contain only the conditions determining the hours during which the licensee may drive a motor vehicle and the purpose for which it is to be driven. A license

issued to a minor who is at least 14 years of age and under 16 years of age shall be revoked by the secretary of state on the written request of a parent, guardian, or person standing in loco parentis.”

MCL 257.312(4)–(5) state:

“(4) A person who violates a restriction imposed in a restricted license issued to that person is guilty of a misdemeanor. This subsection shall not apply to a person who is at least 14 years of age and under 16 years of age.

“(5) If a motor vehicle is being driven by a person who is at least 14 years of age and under 16 years of age, and that person is accompanied by a parent, guardian, or person standing in loco parentis, the conditions, limitations, and restrictions set forth in this section do not apply.”

B. Elements of the Offense

- 1) Defendant’s license was issued to him or her with restrictions or conditions necessary for the safe operation of a motor vehicle; and
- 2) Defendant drove in violation of a restriction or condition.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

MCL 257.312(3) states:

“Upon receiving satisfactory evidence of a violation of the restrictions of the license, the secretary of state may suspend or revoke the license.”

3.21 Driving With an Invalid License

A. Statutes:

MCL 257.301 states:

“(1) Except as provided in this act, a person shall not drive a motor vehicle upon a highway in this state unless that person has a valid operator’s or chauffeur’s license with the appropriate group designation and indorsements for the type or class of vehicle being driven or towed.

“(2) A person shall not receive a license to operate a motor vehicle until that person surrenders to the secretary of state all valid licenses to operate a motor vehicle issued to that person by this or any state or certifies that he or she does not possess a valid license. The secretary of state shall notify the issuing state that the licensee is now licensed in this state.

“(3) A person shall not have more than 1 valid driver’s license.

“(4) A person shall not drive a motor vehicle as a chauffeur unless that person holds a valid chauffeur’s license. A person shall not receive a chauffeur’s license until that person surrenders to the secretary of state a valid operator’s or chauffeur’s license issued to that person by this or any state or certifies that he or she does not possess a valid license.

“(5) A person holding a valid chauffeur’s license need not procure an operator’s license.”

B. Elements of the Offense

- 1) Defendant drove a motor vehicle on a highway; and
- 2) At that time, defendant did not have a valid license.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

The Secretary of State is required to impose a \$150.00 driver responsibility fee for a conviction of MCL 257.301. MCL 257.732a(2)(c). * The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

*The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

3.22 Driving Without a License

A. Statute

MCL 257.904a states:

“Any person, not exempt from license under this act, who shall operate a motor vehicle upon the highways of this state and who is unable to show that he or she has been issued a license to operate a motor vehicle by any state or foreign country valid within the 3 years preceding is guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not more than 90 days, or by a fine of not less than \$50.00 nor more than \$100.00, or both. Any person convicted of a second offense under this section shall be punished by imprisonment for not less than 2 nor more than 90 days, or by a fine of \$100.00, or both.”

B. Elements of the Offense

- 1) Defendant operated a motor vehicle on the highways of this state;
- 2) At that time, defendant was unable to show that he or she had been issued a license to operate a motor vehicle by any state or foreign country valid within the past three years; and
- 3) Defendant was not exempt from the required license under this act.*

*See MCL 257.302 for a list of persons exempt from licensing requirements.

C. Criminal Penalties

MCL 257.904a provides the following penalties:

1. First Offense:

- imprisonment for not more than 90 days; or

- fine of \$50.00 to \$100.00; or
- both.

2. Second Offense:

- imprisonment for not less than two days or more than 90 days; or
- fine of \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

3.23 Driving Without a License in Possession

A. Statute

MCL 257.311 states:

“The licensee shall have his or her operator’s or chauffeur’s license, or the receipt described in section 311a, in his or her immediate possession at all times when operating a motor vehicle, and shall display the same upon demand of any police officer, who shall identify himself or herself as such.”

B. Elements of the Offense

- 1) Defendant, a licensed driver, operated a motor vehicle; and
- 2) At that time, defendant did not have his or her license in immediate possession; or
- 3) Defendant failed to display his or her license on demand of an identified police officer.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or

- both.

However, if the defendant did not have his or her license in immediate possession, the court shall waive the fine and costs on receipt of certification by a law enforcement agency that the defendant, before the appearance date on the citation, has produced his or her license and that the license was valid on the date the violation occurred. MCL 257.901a.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. See MCL 257.320a(2) (no points assigned). A conviction is reported to the Secretary of State.

E. Issues

A person is charged with this offense when they have driving privileges and a valid license, but they do not have the license in immediate possession at the time of the violation.

The receipt described in MCL 257.311a is issued by the court to a person who is accused of a misdemeanor or ordinance violation, and who is required to surrender his or her license as a condition of bail. The receipt has the same effect as the license in granting driving privileges, but that effect expires either on the date specified on the receipt by the court or on the date on which the license expires, whichever date occurs first.

A police officer does not need to orally identify himself or herself to meet the requirements of MCL 257.311. In *People v McKinley*, 255 Mich App 20, 29 (2003) the Court stated,

“The term ‘identify’ is not defined in the statute or the vehicle code, thus, we consult the *Random House Webster’s College Dictionary* (2001), to construe the term ‘identify’ to mean ‘to recognize or established as being a particular person or thing.’”

The Court held that where an officer was in a fully marked police vehicle with its emergency lights activated and approached a defendant while in full uniform, the requirement of MCL 257.311 to identify himself as a police officer was met. *McKinley*, *supra* at 29–30.

3.24 Reporting a False Address Change to the Secretary of State

A. Statute

MCL 257.315(4)–(5) state:

“(4) A person shall not knowingly report a change of address to the secretary of state for himself or herself that is not his or her residence address. A person shall not knowingly report a change of address to the secretary of state for another person without the consent of the other person. A person who is convicted of a violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$1,000.00, or both. . . .

“(5) Upon a second or subsequent conviction under subsection (4), a person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$5,000.00, or both. . . .”

B. Elements of the Offense

- 1) Defendant reported a change of address to the Secretary of State that was not his or her residence address; or
- 2) Defendant reported a change of address to the Secretary of State for another person without the consent of the other person.

C. Criminal Penalties

1. First Offense

MCL 257.315(4) provides the following penalties for a first offense:

- imprisonment for not more than 93 days; or
- fine of \$1,000.00; or
- both.

2. Second Offense

MCL 257.315(5) provides the following penalties for a second or subsequent offense:

- imprisonment for not more than 93 days; or
- fine of \$5,000.00; or
- both.

D. Licensing Sanctions

No points are assessed for this offense. A conviction is reported to the Secretary of State.

1. First Offense

Upon receiving an abstract of conviction for a first offense, the Secretary of State may suspend the person's license for six months. The Secretary of State shall not issue a restricted license during the period of this suspension. MCL 257.315(4).

2. Second Offense

Upon receiving an abstract of conviction for a second or subsequent offense, the Secretary of State shall revoke the person's license. MCL 257.315(5).

E. Issues

1999 PA 118, effective April 1, 2000, decriminalized the offense of failing to change a person's address on his or her driver's license. MCL 257.315(1) and (3). See Section 2.22 of this volume for a summary of that offense.

"Under the Michigan Vehicle Code, the defendant has a duty to show a correct address on his [or her] operator's license. This duty exists even though the time may not have arrived when the license itself needs to be renewed." *Hamilton v Gordon*, 135 Mich App 289, 294 (1984).

3.25 Reproducing, Altering, Counterfeiting, Forging, or Duplicating a License, or Using Such License, With Intent to Commit a Crime

A. Statute

MCL 257.310(7)(c) states:

"(7) A person who intentionally reproduces, alters, counterfeits, forges, or duplicates a license photograph, the negative of the photograph, an image, a license, or the electronic data contained on a license or a part of a license or who uses a license, an image, or photograph that has been reproduced, altered, counterfeited, forged, or duplicated is subject to 1 of the following:

* * *

"(c) If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit

or aid in the commission of an offense that is a misdemeanor punishable by imprisonment for less than 6 months, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.”

B. Elements of the Offense

- 1) Defendant reproduced, altered, counterfeited, forged, or duplicated a license photograph, the negative of a photograph, an image, a license, or the electronic data contained on the license or a part of a license; or
- 2) Defendant used a license, an image, or photograph that was reproduced, altered, counterfeited, forged, or duplicated; and
- 3) With such license, defendant intended to commit or aid in the commission of a crime punishable by less than six months' imprisonment.

C. Criminal Penalties

MCL 257.310(7)(c) provides the following penalties:

- imprisonment for not more than one year; or
- fine of not more than \$2,000.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

See Volume 3, Section 7.2 for discussion of the felony offense of reproducing, altering, forging, or duplicating a license.

3.26 Possession of a Reproduced, Altered, Counterfeit, Forged, or Duplicate License

A. Statute

MCL 257.310(10) states:

“Except as provided in subsection (16), a person who is in possession of a reproduced, altered, counterfeited, forged, or duplicated license photograph, negative of the photograph, image, license, or electronic data contained on a license or part of a license is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.”

MCL 257.310(16) provides the following exception:

“Subsections (8), (9), and (10) do not apply to a person who is in possession of 1 or more photocopies, reproductions, or duplications of a license to document the identity of the licensee for a legitimate business purpose.”

B. Element of the Offense

Defendant possessed a reproduced, altered, counterfeited, forged, or duplicated license photograph, the negative of a photograph, an image, a license, or the electronic data contained on the license or a part of a license.

C. Criminal Penalties

MCL 257.310(10) provides the following penalties:

- imprisonment for not more than one year; or
- fine of not more than \$2,000.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.27 Unlawful Use or Display of License

A. Statute

MCL 257.324(1)–(2) state:

“(1) A person shall not do any of the following:

“(a) Display, or cause or permit to be displayed, or have in possession an operator’s or chauffeur’s license knowing the operator’s or chauffeur’s license to be fictitious or to have been canceled, revoked, suspended, or altered.

“(b) Lend to or knowingly permit use of, by one not entitled to its use, the operator’s or chauffeur’s license issued to the person lending or permitting the use of the operator’s or chauffeur’s license.

“(c) Display or to represent as one’s own any operator’s or chauffeur’s license not issued to the person displaying the operator’s or chauffeur’s license.

“(d) Fail or refuse to surrender to the department upon demand, any operator’s or chauffeur’s license which has been suspended, canceled, or revoked as provided by law.

“(e) Use a false or fictitious name or give a false or fictitious address in an application for an operator’s or chauffeur’s license, or any renewal or duplicate of an operator’s or chauffeur’s license, or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in making an application.

“(f) Alter or otherwise cause to be altered any operator’s or chauffeur’s license so as to knowingly make a false statement or knowingly conceal a material fact in order to misrepresent as one’s own the operator’s or chauffeur’s license.

“(g) Use or have in possession in committing a crime an operator’s or chauffeur’s license that has been altered or that is used to knowingly make a false statement or to knowingly conceal a material fact in order to misrepresent as one’s own the operator’s or chauffeur’s license.

“(h) Furnish to a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person, if the person is detained for a

violation of this act or of a local ordinance substantially corresponding to a provision of this act.

“(2) A license for an operator or chauffeur issued under this chapter upon an application that is untrue, or that contains false statements as to any material matters, is absolutely void from the date of issuance. The operator or chauffeur who was issued the license is considered unlicensed and the license issued shall be returned upon request or order of the department.”

B. Elements of the Offense

1. A person shall not do any of the following:

- a. Display or possess any license knowing it to be fictitious, canceled, revoked, suspended, or altered.
- b. Lend or knowingly permit another person to use one's license.
- c. Display or represent another person's license as one's own.
- d. Fail or refuse to surrender to the department on demand any license which has been suspended, canceled, or revoked.
- e. Use a false or fictitious name or address in an application for a license or for any renewal or duplicate, or knowingly make a false statement, or knowingly conceal a material fact or otherwise commit a fraud in making application.
- f. Alter any license so as to knowingly make a false statement, or knowingly conceal a material fact in order to misrepresent another person's license as one's own.
- g. In committing a crime, use or possess a license that has been altered or that is used to knowingly make a false statement, or to knowingly conceal a material fact in order to misrepresent another person's license as one's own.
- h. If detained for a violation of this act, furnish to a peace officer false, forged, fictitious, or misleading verbal or written information identifying oneself as another person.

2. Any license issued under an application that is untrue, or that contains false statements as to any material matters, shall be absolutely void from the date of issuance. The person who was issued the license shall be deemed unlicensed, and the license shall be taken on request or order of the Secretary of State.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No points are assessed for this offense. A conviction is reported to the Secretary of State.

1. First Offense

For a violation of MCL 257.324(1), if the person has no prior conviction for perjury, false certification, or a violation of MCL 257.324(1), the Secretary of State shall suspend the person's license for 90 days. MCL 257.319(5)(a).

2. Second Offense Within Seven Years

For a violation of MCL 257.324(1), if the person has one or more prior convictions for perjury, false certification, or MCL 257.324(1), the Secretary of State shall suspend the person's license for one year. MCL 257.319(5)(b).

Part D—Title, Plate, Registration, and Insurance Violations

3.28 Failing to Apply for Registration and Certificate of Title

A. Statute

MCL 257.217(1) states:

“An owner of a vehicle that is subject to registration under this act shall apply to the secretary of state, upon an appropriate form furnished by the secretary of state, for the registration of the vehicle and issuance of a certificate of title for the vehicle . . . The application shall be accompanied by the required fee. An application for a certificate of title shall bear the signature of the owner. . . .”

B. Elements of the Offense

1. Defendant owned a vehicle that was of a type required to be registered with the Secretary of State; and
2. Defendant failed to register the vehicle, failed to apply for certificate of title, or failed to pay the required fee.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No points are assessed for this offense. A conviction is reported to the Secretary of State. For perjury or making a false certification to the Secretary of State, if the person has no prior conviction for perjury, false certification, or violation of MCL 257.324(1), the Secretary of State shall suspend the person's license for 90 days. MCL 257.319(5)(a). For perjury or making a false certification to the Secretary of State, if the person has one or more prior convictions for perjury, false certification, or a violation of MCL 257.324(1), the Secretary of State shall suspend the person's license for one year. MCL 257.319(5)(b).

E. Issues

The title transfer provisions of the Motor Vehicle Code must be complied with even in the case of an inoperable motor vehicle sold for junk or salvage purposes. *Holtzlander v Brownell*, 182 Mich App 716, 720 (1990).

3.29 Failing to Transfer Title

A. Statutes

MCL 257.234(1)–(3) state:

“(1) The purchaser or transferee, unless the person is a licensed dealer, shall present or cause to be presented the certificate of title and registration certificate if plates are being transferred to another vehicle, assigned as provided in this act, to the secretary of state

accompanied by the fees as provided by law, whereupon a new certificate of title and registration certificate shall be issued to the assignee. The certificate of title shall be mailed or delivered to the owner or another person the owner may direct in a separate instrument in a form the secretary of state shall prescribe.

“(2) If the secretary of state mails or delivers a purchaser’s or transferee’s certificate of title to a dealer, the dealer shall mail or deliver that certificate of title to the purchaser or transferee not more than 5 days after receiving the certificate of title from the secretary of state.

“(3) Unless the transfer is made and the fee paid within 15 days, the vehicle shall be considered to be without registration, the secretary of state may repossess the license plates, and transfer of the vehicle ownership may be effected and a valid registration acquired thereafter only upon payment of a transfer fee of \$15.00 in addition to the fee provided for in [MCL 257.806].”

MCL 257.806(1)–(3) state:

“(1) Until October 1, 2009, a fee of \$10.00 shall accompany each application for a certificate of title required by this act or for a duplicate of a certificate of title. An additional fee of \$5.00 shall accompany an application if the applicant requests that the application be given special expeditious treatment. A \$3.00 service fee shall be collected, in addition to the other fees collected under this subsection, for each title issued. The \$3.00 service fee shall be deposited into the transportation administration collection fund.

“(2) A fee of \$10.00 shall accompany an application for a special identifying number as provided in [MCL 257.230].*

“(3) In addition to paying the fees required by subsection (1), until December 31, 2007, each person who applies for a certificate of title, a salvage vehicle certificate of title, or a scrap certificate of title, under this act shall pay a tire disposal surcharge of \$1.50 for each certificate of title or duplicate of a certificate of title that person receives. The secretary of state shall deposit money received under this subsection into the scrap tire regulatory fund created in section 16908 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16908.”

*MCL 257.230 provides for a special identifying number after an engine, serial, or vehicle number has been altered, removed, or defaced.

B. Elements of the Offense

- 1) Defendant was the purchaser or transferee of a motor vehicle required to be registered with the Secretary of State; and

- 2) Defendant failed to present the certificate of title and registration certificate if plates are being transferred to another vehicle to the Secretary of State with the appropriate fees within 15 days.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

The title transfer provisions of the Motor Vehicle Code must be complied with even in the case of an inoperable motor vehicle sold for junk or salvage purposes. *Holtzlander v Brownell*, 182 Mich App 716, 720 (1990).

3.30 Forging Proof of Insurance

A. Statute

MCL 257.905 states:

“A person who forges, or without authority signs, any evidence of ability to respond in damages as required by the secretary of state . . . is guilty of a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$1,000.00, or imprisonment for not more than 90 days, or both. . . .”

B. Elements of the Offense

Defendant forged, or without authority signed, proof of insurance.

C. Criminal Penalties

MCL 257.905 provides for:

- imprisonment for not more than 90 days; or

- fine of not less than \$100.00 or more than \$1,000.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

There are four different offenses in Michigan dealing with an owner's obligation to have no-fault automobile insurance. Because these offenses are often confused with one another, they are listed here in order of severity:

- No proof of insurance is a civil infraction under MCL 257.328(1). See Section 2.18 of this volume for this civil infraction.
- Forging proof of insurance is a 90-day misdemeanor under MCL 257.905.
- Producing false evidence of insurance is a one-year misdemeanor under MCL 257.328(5). See Section 3.32, below, for this offense.
- Operating a motor vehicle without insurance is a one-year misdemeanor under the Insurance Code, MCL 500.3102(2). This offense is not included in the *Traffic Benchbook*.

3.31 Operating an Unregistered Vehicle

A. Statute

MCL 257.215 states:

“It is a misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been applied for or for which the appropriate fee has not been paid.
...”

Thirteen exceptions to the foregoing provision are found at MCL 257.216. One in particular states: “For 3 days immediately following the date of a properly assigned title or signed lease agreement from any person other than a vehicle dealer, a registration need not be obtained for a vehicle driven or moved upon the highway for the sole purpose of transporting the vehicle in the most direct route from the place of purchase or lease to a place of storage

if the driver has in his or her possession the assigned title showing the date of sale or lease agreement showing the date of the lease.” MCL 257.216(l).

B. Elements of the Offense

- 1) Defendant operated or knowingly permitted another person to operate a vehicle on the highway; or

Defendant moved or knowingly permitted another to move the vehicle on a highway;

- 2) The vehicle was of a type required to be registered with the Secretary of State; and
- 3) The vehicle was not registered, certificate of title was not applied for, or appropriate fees were not paid.

C. Criminal Penalties

MCL 257.901(2) provides the following penalties:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

3.32 Producing False Evidence of Motor Vehicle Insurance

A. Statute

MCL 257.328(6) and (8) state:

“(6) An owner or operator of a motor vehicle who knowingly produces false evidence [of motor vehicle insurance] under this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

“(8) This section does not apply to the owner or operator of a motor vehicle that is registered in a state other than this state or a foreign country or province.”

B. Elements of the Offense

- 1) Defendant owned a motor vehicle or operated a motor vehicle on a highway;
- 2) Defendant was asked to produce evidence of insurance for the motor vehicle he or she owned or operated; and
- 3) Defendant knowingly produced false evidence of motor vehicle insurance.

C. Criminal Penalties

MCL 257.328(6) provides for:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

D. Licensing Sanctions

No points are assessed for this offense. MCL 257.328(7). A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

Subject to MCL 257.732a(8), when an abstract is posted that a person has been found guilty or determined responsible for a violation of MCL 257.328, the Secretary of State shall assess a \$200.00 driver responsibility fee each year for two consecutive years. MCL 257.732a(2)(d).*

E. Issues

There are four different offenses in Michigan dealing with an owner's obligation to have no-fault automobile insurance. Because these offenses are often confused with one another, they are listed here in order of severity:

- Failing to produce evidence of insurance is a civil infraction under MCL 257.328(1). See Section 2.18 of this volume for this civil infraction.
- Forging proof of insurance is a 90-day misdemeanor under MCL 257.905. See Section 3.30, above, for this offense.
- Producing false evidence of insurance is a one-year misdemeanor under MCL 257.328(5).

*The fee is assessed for convictions under a Michigan law or ordinance, or a substantially corresponding law of another state.

- Operating a motor vehicle without insurance is a one-year misdemeanor under the Insurance Code, MCL 500.3102(2). This offense is not included in this benchbook.

3.33 Reproducing, Altering, Counterfeiting, Forging, or Duplicating Certificate of Title, or Using Such Certificate of Title, With Intent to Commit a Crime

A. Statute

MCL 257.222(6)(a)–(b) state:

“(6) A person who intentionally reproduces, alters, counterfeits, forges, or duplicates a certificate of title or who uses a reproduced, altered, counterfeited, forged, or duplicated certificate of title shall be punished as follows:

“(a) If the intent of reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for 1 or more years, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for a period equal to that which could be imposed for the commission of the offense the person had the intent to aid or commit. The court may also assess a fine of not more than \$10,000.00 against the person.

“(b) If the intent of reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for not more than 1 year, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.”

B. Elements of the Offense

- 1) Defendant reproduced, altered, counterfeited, forged, or duplicated a certificate of title; or
- 2) Defendant used a reproduced, altered, counterfeited, forged, or duplicated certificate of title; and

- 3) With such certificate of title, defendant intended to commit or aid in the commission of a crime.

C. Criminal Penalties

MCL 257.222(6)(a) provides the following penalties, which depend upon the length of imprisonment for the intended crime:

- 1) If the intended crime is punishable by imprisonment for more than one year:
 - imprisonment for a period equal to that which could be imposed for the commission of the crime; and
 - fine of not more than \$10,000.00.
- 2) If the intended crime is punishable by imprisonment for not more than one year:
 - imprisonment for not more than one year; or
 - fine of not more than \$1,000.00; or
 - both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

Even though MCL 257.222(6)(a) says the defendant shall be guilty of a misdemeanor, the penalty provision states that the period of imprisonment is equal to that which could be imposed for the crime the defendant intended to commit.

This criminal offense is distinguishable from false application for title, a felony, under MCL 257.254. Specific intent to fraudulently pass title is not an element of making false application for certificate of title; intent can be inferred from the other necessary elements. See Section 7.4 in Volume 3 of the *Traffic Benchbook—Third Edition*.

3.34 Temporary Registration Violations

A. Statute

MCL 257.226b(1)–(2) state:

“(1) A temporary registration may be issued to an owner of a vehicle. The registration shall be valid for either 30 days or 60 days from date of issue, at the discretion of the owner, and shall be in a form as determined by the secretary of state. A fee shall be collected for each temporary registration as provided in [MCL 257.802].

“(2) A vehicle which has a temporary registration shall not be used for the transportation of passengers for hire or for the transportation of goods, wares, or merchandise or draw other vehicles transporting goods, wares, or merchandise.”

B. Elements of the Offense

- 1) Defendant was issued a temporary registration for his or her vehicle; and
- 2) During the time that the temporary registration was valid, defendant transported passengers for hire; transported goods, wares, or merchandise; or drew other vehicles transporting goods, wares, or merchandise.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

3.35 Unlawful Lending or Use of Title, Registration Certificate, Plate, or Permit

A. Statute

MCL 257.256(1) states:

“A person shall not lend to another person, or knowingly permit the use of, any certificate of title, registration certificate, registration plate, special plate, or permit issued to him or her if the

person receiving or using the certificate of title, registration certificate, registration plate, special plate, or permit would not be entitled to the use thereof. A person shall not carry or display upon a vehicle any registration certificate or registration plate not issued for the vehicle or not otherwise lawfully used under this act.”

B. Elements of the Offense

Both the lender and borrower are liable under this statute:

- 1) Defendant loaned to another person, or knowingly permitted another person to use, a title, registration certificate, plate, or permit that was issued to the defendant, and the other person was not otherwise entitled to its use.

or

- 2) The other person carried or displayed on a vehicle a registration certificate or plate not issued for that vehicle.

C. Criminal Penalties

MCL 257.256(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

A defendant dealer was held to be in violation of MCL 257.256 when he allowed his employees, including the defendant driver, regular access to his automobile dealer plates for their personal use. *Wieland v Kenny*, 385 Mich 654, 658 (1971).

Defendant dealer loaned another its dealer license plate for the limited purpose of driving a newly purchased automobile to another location. There was no improper loan of the dealer plate or continued improper use of the plate with the dealer’s knowledge and consent as in *Wieland*, above. *McCroskey v Gene Deming Motor Sales, Inc*, 94 Mich App 309, 313–314 (1979).

Part E — Other Misdemeanors Found in the Motor Vehicle Code

3.36 Disobeying the Direction of a Police Officer Who Is Regulating Traffic

A. Statute

MCL 257.602 states:

“A person shall not refuse to comply with a lawful order or direction of a police officer when that officer, for public interest and safety, is guiding, directing, controlling, or regulating traffic on the highways of this state.”

B. Elements of the Offense

- 1) Defendant refused to comply with a lawful order or direction of a police officer; and
- 2) At that time, the police officer was guiding, directing, controlling, or regulating traffic for public interest and safety.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State. However, there is no requirement that defendant must be operating a vehicle to commit this offense. For example, defendant could commit this offense if he or she was a pedestrian, a vendor, or a solicitor at the time that he or she disobeyed the police officer. See OAG, 1955, No 2098 (July 13, 1955). In such cases, this would not be considered a moving violation.

E. Issues

See Section 7.8 in Volume 3 of the *Traffic Benchbook* for summaries of the felony offense of fleeing and eluding a police officer under MCL 257.602a.

3.37 Drag Racing

A. Statute

MCL 257.626a states:

“It shall be unlawful for any person to operate any vehicle upon any highway, or any other place open to the general public, including any area designated for the parking of motor vehicles, within this state, in a speed or acceleration contest or for the purpose of making a speed record, whether from a standing start or otherwise over a measured or unmeasured distance, or in a drag race herein defined.

“‘Drag racing’ means the operation of 2 or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other over a common selected course or where timing is involved or where timing devices are used in competitive accelerations of speeds by participating vehicles. Persons rendering assistance in any manner to such competitive use of vehicles shall be equally charged as participants. The operation of 2 or more vehicles either at speeds in excess of prima facie lawfully established speeds or rapidly accelerating from a common starting point to a speed in excess of such prima facie lawful speed is prima facie evidence of drag racing and is unlawful.”

B. Elements of the Offense

- 1) Defendant operated a vehicle on a highway or any other place open to the general public, including a parking area; and
- 2) At that time, defendant was participating in a speed or acceleration contest, or was driving for the purpose of making a speed record, or was participating in a “drag race” as defined above.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or

- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Four points. MCL 257.320a(1)(j). A conviction is reported to the Secretary of State.

3.38 Failing to Answer Citation, Appear in Court, or Comply With an Order or Judgment

A. Statute

MCL 257.321a(1) states:

“A person who fails to answer a citation, or a notice to appear in court for a violation reportable to the secretary of state under [MCL 257.732*] or a local ordinance substantially corresponding to a violation of a law of this state reportable to the secretary of state under [MCL 257.732], or for any matter pending, or who fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, fees, and assessments, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both. A violation of this subsection or failure to answer a citation or notice to appear for a violation of section 33b(1) of former 1933 (Ex Sess) PA 8, section 703(1) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, or a local ordinance substantially corresponding to either of those sections shall not be considered a violation for any purpose under [MCL 257.320a].”

*See Section 2.12(C) of Volume 3 of the *Traffic Benchbook* for a list of violations reportable under MCL 257.732.

B. Elements of the Offense

This statute establishes one misdemeanor offense that can be committed two ways:

- 1) Defendant failed to answer a citation or notice to appear for an offense reportable to the Secretary of State under MCL 257.732, or for any matter pending; or
- 2) Defendant failed to comply with an order or judgment of the court, including but not limited to paying all fines, costs, fees, and assessments.

These offenses are commonly referred to as failure to appear in court (FAC) and failure to comply with judgment (FCJ).

C. Criminal Penalties

MCL 257.321a(1) provides for:

- imprisonment for not more than 93 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

1) In addition to misdemeanor penalties, license suspension can result from a person's failure to answer a citation or notice to appear in court or failure to comply with a judgment. Under MCL 257.321a(2)–(4), the court is required to notify the person that license suspension may result from his or her inaction. If the person does not appear or comply with the court's order or judgment within a stated time after receiving notice from the court, the court must report this failure to the Secretary of State. Upon receipt of the report from the court, the Secretary of State is to immediately suspend the person's license. The time requirements contained in the court's notices differ depending upon the charges brought against the person.

- ♦ In cases involving offenses other than certain drunk driving and alcohol-related crimes,* the notice from the court must be mailed to the person's last known address at least 28 days after the person fails to appear or comply with an order or judgment. The notice shall state that the person's license will be suspended if he or she fails to appear or to comply with the court's order or judgment within 14 days of issuance of the notice. If the person fails to comply with this notice, the court must notify the Secretary of State within 14 days. The Secretary of State will then immediately suspend the person's license and notify the person by regular mail sent to the person's last known address. MCL 257.321a(2).

MCL 257.321a(5) requires that a license suspension imposed under §321a(2) shall remain in effect until both of the following occur:

- The court informs the Secretary of State that the defendant has appeared before the court and all matters relating to the violation are resolved; and
- The defendant has paid to the court a \$45.00 driver's license clearance fee for each failure to appear or failure to comply with a court order.

*These offense are listed in MCL 257.321a(3), which is addressed at Section 2.14(B)(1) of Volume 3 of the *Traffic Benchbook—Third Edition*.

- ♦ In cases involving parking violations, the court may give the defendant notice and ten days to appear if the defendant fails to answer two or more handicap parking violation notices or citations, or six or more parking violation notices or citations. If the defendant fails to appear or comply within ten days, the Secretary of State shall not issue or renew a driver's license to the defendant until the defendant resolves all outstanding matters and pays to the court a \$45.00 driver's license clearance fee. MCL 257.321a(7)–(8).
- 2) The last line of MCL 257.321a(1) says, “A violation of this subsection shall not be considered a violation for any purpose under section 320a.” Therefore, no points will be assessed on defendant's driving record.

E. Issues

When the defendant has appeared before the court, and all matters relating to the violation or to the noncompliance are resolved, and the defendant has paid to the court the \$45.00 driver's license clearance fee, the court shall give to the defendant a copy of the information being sent to the Secretary of State. Upon showing that copy, a person shall not be arrested or issued a citation for driving on a suspended license on the basis of any matter resolved, even if the information sent to the Secretary of State has not been received or recorded. MCL 257.321a(10).

MCL 257.321a(11) requires that the court transmit for each fee received the following amounts on a monthly basis:

“(a) Fifteen dollars to the secretary of state. The funds received by the secretary of state under this subdivision shall be deposited in the state general fund and shall be used to defray the expenses of the secretary of state in processing the suspension and reinstatement of driver licenses under this section.

“(b) Fifteen dollars to 1 of the following, as applicable:

(i) If the matter is before the circuit court, to the treasurer of the county for deposit in the general fund.

(ii) If the matter is before the district court, to the treasurer of the district funding unit for that court, for deposit in the general fund. As used in this section, ‘district funding unit’ means that term as defined in . . . MCL 600.8104.

(iii) If the matter is before a municipal court, to the treasurer of the city in which the municipal court is located, for deposit in the general fund.

“(c) Fifteen dollars to the juror compensation reimbursement fund created in section 151d of the revised judicature act of 1961, 1961 PA 236, MCL 600.151d.”

“Any policeman, law enforcing agent, or judicial officer who is informed by an official communication from the secretary of state that the secretary of state has suspended or revoked an operator’s, moped, or chauffeur’s license under the provisions of this act, shall obtain and destroy the suspended or revoked license.” MCL 257.321b.

3.39 Failing to Disclose Odometer Mileage

A. Statute

MCL 257.233a(1) states:

“When the owner of a registered motor vehicle transfers his or her title or interest in that vehicle, the transferor shall present to the transferee before delivery of the vehicle, written disclosure of odometer mileage by means of the certificate of title or a written statement signed by the transferor”

B. Elements of the Offense

- 1) Defendant transferred his or her interest in a motor vehicle to another person; and
- 2) Defendant failed to disclose the odometer mileage, or misrepresented, in writing, the actual mileage.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

“The odometer statute in Michigan does not require the intent to defraud The main purpose behind the odometer statute is to protect a buyer from being defrauded by a seller who fraudulently turns back the odometer.” *People v Houseman*, 128 Mich App 17, 22 (1983).

“[F]ailure to comply with the odometer statute requirements merely renders the transaction voidable by the purchaser.” It does not automatically void the transaction. *Whitecraft v Wolfe*, 148 Mich App 40, 54 (1985).

A person who, with intent to defraud, violates MCL 257.233a(1) or (6) is liable in an amount equal to three times the amount of actual damages sustained or \$1,500.00, whichever is greater, plus costs and reasonable attorney fees in the case of a successful recovery of damages. MCL 257.233a(15).

The odometer statute also applies to a new or used vehicle dealer, a lessor of a leased vehicle, and an auction dealer or vehicle salvage pool operator. See MCL 257.233a(10)–(13).

Odometer tampering is a felony under MCL 257.233a(6)–(7). See Section 7.7 in Volume 3 of the *Traffic Benchbook–Third Edition*.

3.40 Failing to Stop for School Crossing Guard

A. Statute:

MCL 257.613d states:

“(1) A driver of a motor vehicle who fails to stop when a school crossing guard is in a school crossing and is holding a stop sign in an upright position visible to approaching vehicular traffic is guilty of a misdemeanor.

“(2) In a proceeding for a violation of this section, proof that the particular vehicle described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the registered owner of the vehicle at the time of the violation, constitutes in evidence a presumption that the registered owner of the vehicle was the driver of the vehicle at the time of the violation.”

B. Elements of the Offense

- 1) Defendant drove a motor vehicle;

- 2) At that time, a school crossing guard, in a school crossing, held a stop sign in an upright position visible to defendant as he or she was approaching; and
- 3) Defendant failed to stop.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Three points. MCL 257.320a(1)(p). A conviction is reported to the Secretary of State. The Secretary of State has interpreted “[d]isobeying a traffic signal or stop sign” to include this offense. A traffic signal includes “any device whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.” MCL 257.72. A school crossing guard manually operates a stop sign to alternately direct traffic to stop and to proceed.

3.41 Failing to Yield to Handicapped Individual

A. Statute

MCL 257.612(4) states:

“A driver of a vehicle who approaches a person using a wheelchair or a device to aid the person to walk at a crosswalk or any other pedestrian crossing shall take such precautions as may be necessary to avoid accident or injury to the person using the wheelchair or device. A person who violates this subsection is guilty of a misdemeanor.”

B. Elements of the Offense

- 1) Defendant drove a vehicle;
- 2) Defendant approached a person using a wheelchair or other walking aid;
- 3) The person was at a crosswalk or other pedestrian crossing; and

- 4) Defendant failed to take necessary precautions to avoid an accident or injury to the person.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

E. Issues

The phrase “a device to aid the person to walk” may be interpreted to include the types of devices commonly used by blind persons such as a cane or a guide dog.

3.42 Falsifying or Improperly Disposing of a Citation

A. Statute

MCL 257.728d provides:

“Whoever knowingly falsifies a citation or copies thereof or a record of the issuance of same, or disposes of such citation, copy or record, in a manner other than as required in this act, or attempts so to falsify or dispose, or attempts to incite or procure another so to falsify or dispose shall be fined not more than \$500.00 or imprisoned in the county jail for a term not to exceed 1 year, or both.”

B. Elements of the Offense

This statute establishes one misdemeanor offense that can be committed three ways:

- 1) Defendant knowingly falsified a citation, a copy of a citation, or a record of the issuance of a citation or attempted to do the same; or

- 2) Defendant improperly disposed of a citation or attempted to do the same; or
- 3) Defendant attempted to incite or procured another to falsify or improperly dispose of a citation.

C. Criminal Penalties

MCL 257.728d provides for:

- imprisonment not to exceed one year; or
- fine of not more than \$500.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.43 Improper Passing of a Stationary Emergency Vehicle

A. Statute

MCL 257.653a(1) states:

“(1) Upon approaching and passing a stationary authorized emergency vehicle that is giving a visual signal by means of flashing, rotating, or oscillating red, blue, or white lights as permitted by [MCL 257.698], the driver of an approaching vehicle shall exhibit due care and caution, as required under the following:

“(a) On any public roadway with at least 2 adjacent lanes proceeding in the same direction of the stationary authorized emergency vehicle, the driver of the approaching vehicle shall proceed with caution and yield the right-of-way by moving into a lane at least 1 moving lane or 2 vehicle widths apart from the stationary authorized emergency vehicle, unless directed otherwise by a police officer. If movement to an adjacent lane or 2 vehicle widths apart is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel moving lanes, the driver of the approaching vehicle shall proceed as required in subdivision (b).

“(b) On any public roadway that does not have at least 2 adjacent lanes proceeding in the same direction as the stationary authorized emergency vehicle, or if the movement by the driver of the vehicle into an adjacent lane or 2 vehicle widths apart is not possible as described in subdivision (a), the approaching vehicle shall reduce and maintain a safe speed for weather, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution, or as directed by a police officer.”

B. Elements

- 1) Defendant drove a vehicle;
- 2) Defendant approached a signaling emergency response vehicle; and
- 3) On a two-lane public roadway, defendant did not approach the emergency vehicle with caution and yield the right-of-way by moving into a lane at least one moving lane or two vehicle widths apart from the emergency vehicle; or
- 4) On a public roadway without at least two adjacent lanes proceeding in the same direction as the emergency vehicle, or if the movement by the driver of the vehicle into an adjacent lane or two vehicle widths apart is not possible, the defendant failed to reduce and maintain a safe speed and proceed with due care and caution.

C. Criminal Penalties

MCL 257.653a(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$500.00 or
- both.

Note: Different penalties apply if the violation of MCL 257.653a(1) causes injury or death to a police officer, firefighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle. MCL 257.653a(3)–(4). See Volume 3, Section 7.13.

D. Licensing Sanctions

Four points. MCL 257.320a(1)(k). A conviction is reported to the Secretary of State.

3.44 Improper Use of Disabled Person Identification

A. Statute

MCL 257.675(15)–(16) state:

“(15) A person who intentionally makes a false statement of material fact or commits or attempts to commit a deception or fraud on a medical statement attesting to a disability, submitted in support of an application for a certificate of identification, windshield placard, free parking sticker, special registration plate, or tab for persons with disabilities under this section, section 803(d) [regarding disabled person plates], or section 803f [regarding disabled veterans and disabled person tabs], is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment for not more than 30 days, or both.

“(16) A person who commits or attempts to commit a deception or fraud by 1 or more of the following methods is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment for not more than 30 days, or both:

“(a) Using a certificate of identification, windshield placard, or free parking sticker issued under this section or by another state to provide transportation to a disabled person, when the person is not providing transportation to a disabled person.

“(b) Altering, modifying, or selling a certificate of identification, windshield placard, or free parking sticker issued under this section or by another state.

“(c) Copying or forging a certificate of identification, windshield placard, or free parking sticker described in this section or selling a copied or forged certificate, placard, or sticker described in this section. In the case of a violation of this subdivision, the fine described in this subsection shall be not less than \$250.00.

“(d) Using a copied or forged certificate of identification, windshield placard, or free parking sticker described in this section.

“(e) Making a false statement of material fact to obtain or assist an individual in obtaining a certificate, placard, or sticker described in this section, a special registration plate under section 803d [regarding disabled person plates], or a tab for persons with disabilities under section 803f [regarding disabled veterans and disabled person tabs].

“(f) Knowingly using or displaying a certificate, placard, or sticker described in this section that has been canceled by the secretary or state.”

B. Elements of the Offense

The elements for a violation of MCL 257.675(15) are as follows:

- 1) On a medical statement attesting to a disability, defendant intentionally does one of the following:
 - makes a false statement of material fact, or
 - commits or attempts to commit a deception or fraud; and
- 2) Defendant’s false statement or deception was submitted in support of an application for a certificate of identification, windshield placard, free parking sticker, special registration plate, or tab for persons with disabilities.

MCL 257.675(16)(a)–(f) establish six misdemeanor offenses:

- 1) Using a disabled person identification to park without transporting a disabled person:
 - Defendant was issued a disabled person identification to transport a disabled person; and
 - Defendant used the disabled person identification for the purpose of parking a vehicle in a courtesy disabled person’s spot, but did not transport a disabled person.
- 2) Altering, modifying, or selling a disabled person identification.
- 3) Copying or forging a disabled person identification, or selling a copied or forged disabled person identification.
- 4) Using a copied or forged disabled person identification.
- 5) Making a false statement of material fact to obtain (or to assist another to obtain) a disabled person identification.
- 6) Knowingly using or displaying a disabled person identification that has been canceled by the Secretary of State.

C. Criminal Penalties

MCL 257.675(15) and (16) provide for:

- imprisonment for not more than 30 days; or

- fine of not more than \$500.00; or
- both.

MCL 257.675(16)(c) provides an exception to the standard criminal penalties if a defendant is found guilty of copying or forging a disabled person identification, or selling a copied or forged disabled person identification. MCL 257.675(16)(c) requires that the court impose a fine of not less than \$250.00.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

Upon conviction of a violation under MCL 257.675, the court may confiscate the disabled person identification and return it to the Secretary of State together with a copy of the sentence imposed. MCL 257.675(14).

3.45 Improper Use of Emergency Lights

A. Statute

MCL 257.698(5)(a)–(k) state:

“(5) The use or possession of flashing, oscillating, or rotating lights of any color is prohibited except as otherwise provided by law, or under the following circumstances:

“(a) A police vehicle shall be equipped with flashing, rotating, or oscillating red or blue lights, for use in the performance of police duties.

“(b) A fire vehicle or ambulance available for public use or for use of the United States, the state, or any unit of the state, whether publicly or privately owned, shall be equipped with flashing, rotating, or oscillating red lights and used as required for safety.

“(c) An authorized emergency vehicle as defined in [MCL 257.2]* may be equipped with flashing, rotating, or oscillating red lights for use when responding to an emergency call if when in use the flashing, rotating, or oscillating red lights are mounted on the roof section of the vehicle, either as a permanent installation or by means of

*See Section 3.46(A), below, for the definition of an emergency vehicle contained in MCL 257.2.

suction cups or magnets and are clearly visible in a 360 degree arc from a distance of 500 feet when in use. A person operating lights under this subdivision at any time other than when responding to an emergency call is guilty of a misdemeanor.

“(d) Flashing, rotating, or oscillating amber lights, placed in a position as to be visible throughout an arc of 360 degrees, shall be used by a state, county, or municipal vehicle engaged in the removal of ice, snow, or other material from the highway and in other operations designed to control ice and snow.

“(e) A vehicle used for the cleanup of spills or a necessary emergency response action taken pursuant to state or federal law or a vehicle operated by an employee of the department of natural resources that responds to a spill, emergency response action, complaint, or compliance activity may be equipped with flashing, rotating, or oscillating amber lights. Such lights shall not be activated unless the vehicle is at the scene of a spill, emergency response action, complaint, or compliance activity.

“(f) A vehicle to perform public utility service, a vehicle owned or leased by and licensed as a business for use in the collection and hauling of refuse, an automobile service car or wrecker, a vehicle engaged in authorized highway repair or maintenance, a vehicle of a peace officer, a vehicle operated by a rural letter carrier or a person under contract to deliver newspapers or other publications by motor route, a vehicle utilized for snow removal, a private security guard vehicle as authorized in subsection (7), a motor vehicle while engaged in escorting or transporting an oversize load that has been issued a permit by the state transportation department or a local authority with respect to highways under its jurisdiction, a vehicle owned by the national guard or a United States military vehicle while traveling under the appropriate recognized military authority, a motor vehicle while towing an implement of husbandry, or an implement of husbandry may be equipped with flashing, rotating, or oscillating amber lights. However, a wrecker may be equipped with flashing, rotating, or oscillating red lights which shall be activated only when the wrecker is engaged in removing or assisting a vehicle at the scene of a traffic accident or disablement. The flashing, rotating, or oscillating amber lights shall not be activated except in those circumstances that the warning produced by the lights is required for public safety.

“(g) A vehicle engaged in leading or escorting a funeral procession or any vehicle that is part of a funeral procession may be equipped with flashing, rotating, or oscillating purple or amber lights which shall not be activated except during a funeral procession.

“(h) An authorized emergency vehicle may display flashing, rotating, or oscillating white lights in conjunction with an authorized emergency light as prescribed in this section.

“(i) A private motor vehicle of a physician responding to an emergency call may be equipped with and the physician may use flashing, rotating, or oscillating red lights mounted on the roof section of the vehicle either as a permanent installation or by means of magnets or suction cups and clearly visible in a 360 degree arc from a distance of 500 feet when in use. The physician shall first obtain written authorization from the county sheriff.

“(j) A public transit vehicle may be equipped with a flashing, oscillating, or rotating light mounted on the roof of the vehicle approximately 6 feet from the rear of the vehicle which displays a white light to the front, side, and rear of the vehicle, which light may be actuated by the driver for use only in inclement weather such as fog, rain, or snow, when boarding or discharging passengers, from 1/2 hour before sunset until 1/2 hour after sunrise, or where conditions hinder the visibility of the public transit vehicle. As used in this subdivision, ‘public transit vehicle’ means a motor vehicle, other than a station wagon or passenger van, with a gross vehicle weight rating of more than 10,000 pounds.

“(k) A person engaged in the manufacture, sale, or repair of flashing, rotating, or oscillating lights governed by this subsection may possess the lights for the purpose of employment, but shall not activate the lights upon the highway unless authorized to do so under subsection (6).”

B. Element of the Offense

Defendant used or possessed emergency lights when he or she was not authorized to do so.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

3.46 Improper Use of Emergency Vehicle

A. Statute

MCL 257.603(2)–(5) set forth the privileges that a driver of an authorized emergency vehicle may exercise, as follows:

“(2) The driver of an authorized emergency vehicle when responding to an emergency call, but not while returning from an emergency call, or when pursuing or apprehending a person who has violated or is violating the law or is charged with or suspected of violating the law, may exercise the privileges set forth in this section, subject to conditions of this section.

“(3) The driver of an authorized emergency vehicle may do any of the following:

“(a) Park or stand, irrespective of this act.

“(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.

“(c) Exceed the prima facie speed limits so long as he or she does not endanger life or property.

“(d) Disregard regulations governing direction of movement or turning in a specified direction.

“(4) The exemptions granted in this section to an authorized emergency vehicle apply only when the driver of the vehicle while in motion sounds an audible signal by bell, siren, air horn, or

exhaust whistle as may be reasonably necessary . . . and when the vehicle is equipped with [and] displaying [emergency lights].

“(5) A police vehicle shall retain the exemptions granted in this section to an authorized emergency vehicle without sounding an audible signal if the police vehicle is engaged in an emergency run in which silence is required.”

Authorized emergency vehicles include “[v]ehicles of the fire department, police vehicles, ambulances, or privately owned motor vehicles of volunteer or paid fire fighters if authorized by the chief of an organized fire department, or privately owned motor vehicles of volunteer or paid members of a life support agency licensed by the department of consumer and industry services if authorized by the life support agency.” MCL 257.2.

B. Elements of the Offense

This statute clearly sets out the elements of this offense.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

Two points. MCL 257.320a(1)(s). The Secretary of State has interpreted “[a]ll other moving violations” to include this offense. A conviction is reported to the Secretary of State.

E. Issues

“The speed limitation set forth in this chapter shall not apply to vehicles when operated with due regard for safety under the direction of the police when traveling in emergencies or in the chase or apprehension of violators of the law or of persons charged with or suspected of a violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies This exemption shall not however protect the driver of the vehicle from the consequences of a reckless disregard of the safety of others.” MCL 257.632.

The driver of an authorized emergency vehicle has a duty to drive with due regard for the safety of others and does not have an absolute right to blindly

proceed through a red light or stop sign. *Placek v City of Sterling Heights*, 405 Mich 638, 670 (1979).

3.47 Moving Violation Causing Injury to Highway Construction Worker

A. Statute

MCL 257.601b(2) states:

“A person who commits a moving violation for which not fewer than 3 points are assigned under [MCL 257.320a] and as a result causes injury to a person working in the work zone is guilty of a misdemeanor”

B. Elements

- 1) Defendant commits a moving violation that requires the assessment of three or more points under MCL 257.320a; and
- 2) Defendant’s violation causes injury to a person working in the work zone.

C. Criminal Penalties

A violation of MCL 257.601b(2) is punishable by:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

D. Licensing Sanctions

Six points. MCL 257.320a(1)(b). A conviction is reported to the Secretary of State. The Secretary of State shall suspend the person’s license for 90 days. MCL 257.319(3)(b). License revocation is required for a person who has two convictions for violations of MCL 257.601b(2) within seven years. MCL 257.303(5)(b)(ii).

3.48 Moving Violation Causing Injury to Person Operating Farm Equipment

A. Statute

MCL 257.601c(1) states:

“A person who commits a moving violation that has criminal penalties and as a result causes injury to a person operating an implement of husbandry on a highway in compliance with this act is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.”

“Implement of husbandry” is defined in MCL 257.21 as “a vehicle which is either a farm tractor, a vehicle designed to be drawn by a farm tractor or an animal, a vehicle which directly harvests farm products, or a vehicle which directly applies fertilizer, spray, or seeds to a farm field.”

B. Elements

- 1) Defendant committed a moving violation with criminal penalties;
and
- 2) Defendant’s violation caused injury to a person operating farm equipment.

C. Criminal Penalties

MCL 257.601c(1) provides for:

- imprisonment for not more than one year; or
- fine of not more than \$1,000.00; or
- both.

D. License Sanctions

Six points. MCL 257.320a(1)(b). A conviction is reported to the Secretary of State. The Secretary of State shall suspend the person’s license for 90 days. MCL 257.319(3)(b). License revocation is required for a person who has two convictions for violations of MCL 257.601c(1) within seven years. MCL 257.303(5)(b)(ii).

3.49 Reckless Driving

A. Statute

MCL 257.626(1)–(2) state:

“(1) A person who drives a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles, in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

“(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or by both.”

B. Elements of the Offense

- 1) Defendant drove a vehicle on a highway, or a frozen public lake, stream, or pond, or place open to the general public, including parking areas; and
- 2) At that time, defendant was driving in willful or wanton disregard for the safety of persons or property.

C. Criminal Penalties

MCL 257.626(2) provides for:

- imprisonment for not more than 93 days; or
- fine of not more than \$500.00; or
- both.

D. Licensing Sanctions

Six points. MCL 257.320a(1)(e). A conviction is reported to the Secretary of State.

1. First Offense

License suspension for 90 days is mandatory for a conviction of reckless driving. MCL 257.319(3)(b).

*The fee is assessed for violation of a Michigan law or ordinance, or a substantially corresponding law of another state.

The Secretary of State is required to impose a \$500.00 driver responsibility fee for a conviction of MCL 257.626. MCL 257.732a(2)(b)(ii).^{*} The fee shall be assessed for two consecutive years. Failure to pay a driver responsibility fee within the time prescribed will result in license suspension. MCL 257.732a(3), (5).

2. Second Offense

License revocation is required for a person who has two convictions of reckless driving within seven years. MCL 257.303(5)(a).

E. Issues

Mere falling asleep is not gross negligence; gross negligence requires willful or wanton misconduct. “To constitute gross negligence in falling asleep while driving, there must have been prior warning of the likelihood of sleep that continuing to drive constitutes reckless disregard of consequences.” *Boos v Sauer*, 266 Mich 230, 233 (1934).

“[M]ere excessive speed does not constitute gross negligence Intoxication is not necessarily indicative of willful and malicious misconduct.” *Bielawski v Nicks*, 290 Mich 401, 404–405 (1939). A driver may be guilty of driving a vehicle at an unlawful or reckless rate of speed although the speed of the vehicle is shown to be less than the legal maximum. *Hammock v Sims*, 313 Mich 248, 257 (1946).

Mere failure or inadvertence or lack of care is, at most, ordinary negligence and will not sustain charge of recklessness or gross negligence. *Walden v Green*, 346 Mich 21, 24 (1956).

In summary, the difference between reckless driving, a misdemeanor, and careless driving,^{*} a civil infraction, is the degree of negligence. The court should consider the manner of operating the vehicle, not the accident that results. Reckless driving requires gross negligence, which is defined as driving in “willful or wanton disregard for the safety of persons or property.” MCL 257.626(1). Careless driving requires ordinary negligence, which is defined as operating a motor vehicle in a “negligent manner likely to endanger any person or property, but without wantonness or recklessness.” MCL 257.626b.

Gross negligence means more than carelessness. In *People v Orr*, 243 Mich 300, 307 (1928), the Michigan Supreme Court articulated three necessary elements that must be found:

“(1) Knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another.

“(2) Ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand.

*See Section 2.12 of this volume for a discussion of careless driving.

“(3) The omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another.”

Careless driving is a civil infraction, and therefore not a lesser included offense of a criminal offense. MCL 257.907(1). If the prosecuting attorney, in a plea bargain, decides to reduce the charge from reckless driving to careless driving, it is necessary to have a citation issued for a civil infraction, to which the defendant can then plead responsible. See Section 2.12 of this volume for a discussion of careless driving.

3.50 Tampering With or Removing Traffic Control Devices

A. Statutes

MCL 257.616 states:

“No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.”

MCL 257.70 provides that traffic control devices include:

“all signs, signals, markings, and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.”

B. Elements of the Offense

- 1) Defendant altered, defaced, injured, knocked down, or removed a traffic-control device or railroad sign, or attempted to do such; and
- 2) Defendant did so without lawful authority.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days in jail; or
- fine of not more than \$100.00; or
- both.

D. Licensing Sanctions

No licensing sanctions are imposed for this offense. A conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

3.51 Transporting or Possessing Open Alcohol in a Motor Vehicle

A. Statute

MCL 257.624a provides as follows:

“(1) Except as provided in subsection (2), a person who is an operator or occupant shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway, or within the passenger compartment of a moving vehicle in any place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this state.

“(2) A person may transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles in this state, if the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is enclosed or encased, and the container is not readily accessible to the occupants of the vehicle.

* * *

“(4) This section does not apply to a passenger in a chartered vehicle authorized to operate by the state transportation department.”

B. Elements of the Offense

- 1) Defendant was an operator or occupant of a motor vehicle at the time of the alleged offense; and
- 2) Defendant transported or possessed alcohol in a motor vehicle on a highway, *or*
- 3) Defendant transported or possessed alcohol in a moving vehicle in any place open to the general public or generally accessible to motor vehicles, including an area designated for parking; and

- 4) The alcohol was in a container that was open, uncapped, or had a broken seal and was within the passenger compartment of the vehicle.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

A person convicted of violating MCL 257.624a may be ordered to perform community service and undergo substance abuse screening and assessment at his or her expense. MCL 257.624a(3).

D. Licensing Sanctions

Two points. MCL 257.320a(1)(q). Only a driver's conviction is reported to the Secretary of State. MCL 257.732(16)(d).

1. Second Offense

If the defendant has one prior conviction for a violation of MCL 257.624a, MCL 257.624b, MCL 436.1703, or former MCL 436.33b(1), the Secretary of State shall suspend the defendant's driver's license for 90 days. A restricted license may be issued after the first 30 days of suspension. MCL 257.319(7). A "conviction" includes "a juvenile adjudication, probate court disposition, or juvenile disposition. . . ." MCL 257.8a(a). "Juvenile adjudication" refers to delinquency adjudications in other states. MCL 257.23a(b). "Probate court disposition" and "juvenile disposition" mean a disposition entered under MCL 712A.18. MCL 257.23b and MCL 257.44a.

2. Third or Subsequent Offense

If the defendant has two or more prior convictions for violations of MCL 257.624a, MCL 257.624b, MCL 436.1703, or former MCL 436.33b(1), the Secretary of State shall suspend the defendant's driver's license for one year. A restricted license may be issued after the first 60 days of suspension. MCL 257.319(7).

*MCL 257.625(6) prohibits persons under age 21 from driving with “any bodily alcohol content.” See Volume 3, Section 3.6.

E. Issues

“A court shall not accept a plea of guilty of nolo contendere for a violation of [MCL 257.624a] from a person charged solely with a violation of [MCL 257.625(6)].”*

MCL 257.624a(2) provides that a person does not violate this statute by transporting open intoxicants in the passenger compartment of a motor vehicle that does not have a separate trunk compartment if:

- The open container is enclosed or encased; and,
- The open container is not readily accessible to the occupants of the vehicle.

This misdemeanor offense formerly appeared in the Michigan Liquor Control Law under MCL 436.34a. The language of that statute was rewritten and now appears in the Motor Vehicle Code under §624a. The new language in subsection (2) clarifies the responsibilities of a person operating a motor vehicles without a trunk or compartment separate from the passenger compartment. Moreover, the word “moving” was added to subsection (1) so that “tailgate” parties would not be made illegal. See 1991 PA 98, effective August 9, 1991.

3.52 Transporting or Possessing Alcohol in a Motor Vehicle by a Person Less Than 21 Years of Age

A. Statute

MCL 257.624b(1) states:

“A person less than 21 years of age shall not knowingly transport or possess alcoholic liquor in a motor vehicle as an operator or occupant unless the person is employed by a licensee under the Michigan liquor control code . . . , a common carrier designated by the liquor control commission . . . , the liquor control commission, or an agent of the liquor control commission and is transporting or having the alcoholic liquor in a motor vehicle under the person’s control during regular working hours and in the course of the person’s employment. This section does not prevent a person less than 21 years of age from knowingly transporting alcoholic liquor in a motor vehicle if a person at least 21 years of age is present inside the motor vehicle. A person who violates this subsection is guilty of a misdemeanor. As part of the sentence, the person may be ordered to perform community service and undergo substance abuse screening and assessment at his or her own expense as described in . . . MCL 436.1703.”

B. Elements of the Offense

- 1) Defendant was less than 21 years of age and was the operator or occupant of a motor vehicle; and
- 2) Defendant transported or possessed alcoholic liquor in the motor vehicle.

MCL 257.624b(1) provides exceptions for persons who are lawfully transporting alcoholic liquor as part of their employment, and persons who are accompanied by someone over 21 years of age in the motor vehicle.

C. Criminal Penalties

MCL 257.901(2) provides for:

- imprisonment for not more than 90 days; or
- fine of not more than \$100.00; or
- both.

The court may also order the defendant to perform community service and undergo substance abuse screening and assessment at his or her own expense. MCL 257.624b(1).

D. Licensing Sanctions

Two points. MCL 257.320a(1)(q). Only a driver's conviction is reported to the Secretary of State. MCL 257.732(16)(d).

1. Second Offense

If the defendant has one prior conviction for a violation of MCL 257.624a, MCL 257.624b, MCL 436.1703, or former MCL 436.33b(1), the Secretary of State shall suspend the person's driver's license for 90 days. A restricted license may be issued after the first 30 days of suspension. MCL 257.319(7).

A "conviction" includes "a juvenile adjudication, probate court disposition, or juvenile disposition. . . ." MCL 257.8a(a). "Juvenile adjudication" refers to delinquency adjudications in other states. MCL 257.23a(b). "Probate court disposition" and "juvenile disposition" mean a disposition entered under MCL 712A.18. MCL 257.23b and 257.44a.

2. Third or Subsequent Offense

If the defendant has two or more prior convictions for violations of MCL 257.624a, MCL 257.624b, MCL 436.1703, or former MCL 436.33b(1), the Secretary of State shall suspend the person's driver's license for one year. A

restricted license may be issued after the first 60 days of suspension. MCL 257.319(7).

E. Issues

Impoundment of the vehicle shall be authorized by court order for a period of not less than 15 days or more than 30 days, “[i]f the court determines upon the hearing of the order to show cause, from competent and relevant evidence, that at the time of the commission of the violation the motor vehicle was being driven by the person less than 21 years of age with the express or implied consent or knowledge of the owner in violation of subsection (1), and that the use of the motor vehicle is not needed by the owner in the direct pursuit of the owner’s employment or the actual operation of the owner’s business. . . .” MCL 257.624b(3).

To start, a complaint must be filed by the arresting officer or the officer’s superior within 30 days after the conviction becomes final requesting that the motor vehicle be impounded. The court shall then issue an order for a hearing to the owner of the motor vehicle to show cause why the motor vehicle should not be impounded. The hearing date in the order shall not be less than ten days after the issuance of the order. The order shall be served by delivering a true copy to the owner, or if the owner cannot be located by sending a true copy by certified mail, not less than three full days before the hearing date. MCL 257.624b(2).

The court order authorizing impoundment allows a law enforcement officer to take possession wherever the motor vehicle is located and to store the vehicle in a public or private garage at the expense and risk of the owner. MCL 257.624b(3).

“A person who knowingly transfers title to a motor vehicle for the purpose of avoiding this section is guilty of a misdemeanor.” MCL 257.624b(4).

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